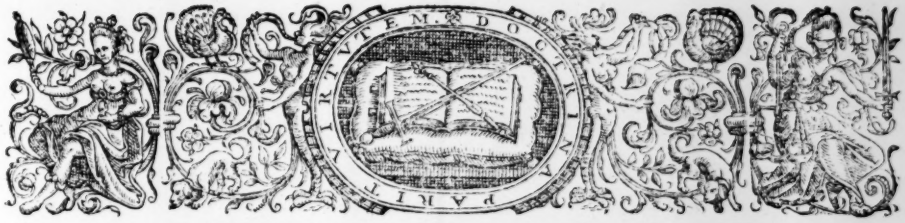

LA SEPT PART DES Reports Sr. Edvv. Coke Chiualer, chiefe Iuſtice del Common Banke:

*des diuers Reſolutions & Iudgements done ſur ſolemne ar-*guments & auec grand deliberation & conference des treſreuerend Iudges & Sages de la Ley, de caſes en ley queux ne fueront vnques reſolue ou adiudges par deuant: Et les raiſons & cauſes des dits Reſolutions & Iudgements.

Publies en le ſize Añ del treshaut & treſ-illuſtre IAQVES Roy Dengl. Fr. & Irel. & de Eſcoce le 42. Le fountaine de tout Pietie & Iuſtice, & la vie de la Ley.

Frequentibus argumentis & collationibus latens veritas aperitur, cum ſub eiſdē verbis ſæpe lateat multiplex intellectus.

Veritas ſæpius agitata magis ſplendeſcit in lucem.

Printed for the Societie of Stationers.
Anno 1608.

Cum Priuilegio.

DEO,
PATRIAE,
TIBI.

Extæ Commentariorum ſiue Relationum mearum parti vix extremã manum addideram (Lector candide) cum, quæ ſingulos exercuit Angliæ Iudices, obortа eſt controuerſia, cuius certè ſimilis nunquam fuit ante hunc diem in aula Weſt. agitata: vnde etiã, dum eorum quæ audieram recens admodum memoria fuit, ea præcipuè (prout mos eſt ſemperq; apud me fuit) quæ ſummariè ex omnibus diſputationibus atque argumentis, plurimum ponderis ac momenti, ſiue authoritates ſiue rationes ad ſoluendam quæſtionem annotaſſem, in proprium ſolamen meum & iuuamen (infida enim eſt labiliſque memoria) priuatim literis mandaui. Nunquam autem iſta quouiſmodo in publicũ proditura putaui, quia (quod primum arbitror et præcipuũ quod ex Relationibus edendis percipi poteſt emolumentum) non veriſimile eſt hunc caſum de alijs in iudicando cognitionem informaturum: nam duo nobiliſſima ſimul & antiquiſſima regna, in vnam conflari monarchiam, vno in vtriſque florentiſſimo rege inuictiſſimoque monarcha dominante, hoc vſu infrequens, imo ſicut ipſe Phœnix vnicum & indiuiduum eſt in ſpecie, cum quo comparari poteſt ſocium habens neminem. Tum demum cum tantum, quantum mei ſolius cauſa apud memet annotare volui, perfeciſſem, mandatum mihi fuit, vt de nouo (quod non minimi ſudoris erat & difficultatis) in vſum etiam publicum, recolligerem: Nam certè ſuccincta iſta & compendioſa annotandi methodus, quæ ſatis eſt in memoriam colligentis, qui omnia atque ſingula prout geſta fuerunt audierit & cognouerit, nequaquam ſane ſatis erit in eo ſcribendi genere, quod & in præſens & futurum ſeculum eſt duraturum, & quod Lectores etiam, qui per ſemetipſos nihil habẽt præter illud quod ex eo quod conſcriptum eſt addiſcant, eſt edoctũrum. Et ſicut vnda gignit vndam, ſic labor vnus alium tanquam gemellum aliquem videtur eſſe conſecutum: Nam cum hic quem dixi caſus, nouus eſſet & inauditus, animum idcirco induxi non inutile fore, ſi, cum ei temet (candide Lector) in quantum poſſem erudirem, alijs item in ambiguarum quarundam, de terris & tenemẽ-

tis ſuis (in quibus adhuc graues admodum et inter ſe pugnãtes Iuriſ-peritorũ opiniones extiterunt) quæſtionũ ſolutione ſatisfacerẽ, altos nõnullos caſus vſu frequentiores, & dignitate inter cæteros nequaquam minores, nunquam antehac dilucidè ſatis iudicijs explicatos, in medium proferrem: ita vt iam ratum ſit quod iamdudum apud antiquos in prouerbium abijt, Labor labori laborem addit.

Putaui ego, ex meain Conciues meos charitate, cuiuſcunq; demũ conditionis religionisue ſint, nauandam eſſe operã, vt non ſolum hanc ſeptimam Relationum mearum partem (cui colligendæ ac in lucem edendæ Deus in hiſce temporum auguſtijs, dum in grauioribus Reipublicæ negotijs verſatus ſum, vires dedit) omnibus ob oculos ponerẽ, ſed vt eoſdẽ etiam adhortarer et præmonerem in quodam non mediocris momenti caſu, qui ſingulos ita neceſſariò, eoq; modo ſpectat, vt, ſi quid in eo peccatum fuerit, in primo gradu ſit pœna de Præmunire, in ſecundo læſæ Maieſtatis culpa, in quo tamen multi (dum Legẽ, vt mihi videtur, ignorant) temerè & inconſulto penè quotidiè delinquunt. Mihi certè confitendũ eſt, eo vſq; nunc tẽporis redactũ eſſe hoc ſeculũ, vt quiſq; pro ſe ſedulo in diſcribendis libellulis faciat, viz. Quotidie plures, quotidie peius ſcribunt. Et certo certius eſt ſi quiſquã hominum libros iſtos (quos ego vidi) nuperrimè conſcriptos a Roma vel a Romaniſtis ad nos vſq; attulerit, aut eos legendo ſuffragijs patrocinatus fuerit, aut eos item alijs approbando (quod maxime apud authores in votis eſt) legẽdos dederit, in ſũmas, et turbulentiſſimas periculorũ tempeſtates incidat neceſſum eſt: nam primò cum in hunc modum peccárit pœnas dabit per Præmunire (quæ ſic ſe habent, adiudicari non eſſe in Regis protectione; eorum terras & bona omnia in Regis poteſtatem redigi; & corpora carceri perpetuo damnari:) & qui ſecundò deliquerit læſæ Maieſtatis graue ſupplicijũ incurret. Hi ſunt illi libri qui ſplendidos & imprimis religioſos præ ſe ferunt titulos, hi illi ſunt qui conſcientijs hominum infirmitate laborantibus opem ferre ſe profitentur, hi ſunt illi denique qui miſeras & miſerandas peccatrices animas in optatum tranquillitatis & ſalutis portum adducere in ſe ſuſcipiunt; at mors in olla; quemadmodum plærumq; in Pharmacopolarum vaſculis videre eſt, quorũ tituli pollicentur remedia, ſed pixides ipſę venena continent. Hiſce ego præmonitionibus vſus ſum e ſolicita eorum cura, qui præſtigias & impoſturas iſtas (quibus hi, quos tanto proſequuntur amore & reuerentia, in ſummum capitis periculum eos de improuiſo ducant) nondum cognôrunt. Iam vero, neque tulices, qui quaſi titillando pungunt paulò, non penetrant, neque fucos iſtos qui ſuſurris tantis bombuliſque quos edunt, maximis, aculeis autem, quibus carent ægriùs, nuſquam loci belligerare ſolent, tantillum pertimeſco; imo inquam, vt eſt apud Poetam,

Non metuo pulicis ſtimulos, fuciq; ſuſurros.

Nec

Lectori.

Nec pili quidem æstimo inuidum istum & maledicum, qui, quo fusius venena sua euomeret, libellum quendam, nescio an rudem an inconcinnum magis, sub titulo & nomine Pricket *in lucem protulit, dicatum, Optimo meo Domino & Socero Comiti Excestr. & inscriptum,* Memoriale siue mandatum Iuratorum in Assisis apud ciuitatem Nordouicam, 4. die Augusti, 1606. *quem sanè conteſtor non solum me omnino insciente fuisse diuulgatum, sed (omissis etiam ipsis potissimis) ne vnam quidem sententiolam e i sensu & significatione, prout dicta erat, fuisse enarratam. Iam vero si catastrophen expectes, ecce (dum perpetuum in me dedecus & infamiam inurere conatus est) quam falsum eius eum habuit expectatio? Primo enim Lectores illi, iuris peritos dico, qui inter legendum, non solum graues & turpes errores & deuias opinionum absurditates, sed ipsas etiam voces artis turpiter in alienum sensum vsurpatas, & totum denique contextum longissime a Iuris-consultorum (de legibus enim agebatur) vsu & consuetudine remotissimum esse, animaduerterunt, continuò hoc in ore habuerunt,* Inimicus & iniquus homo superseminauit zizania in medio tritici. *Deinde alij quoque cordati & æqui Lectores, dum generis dicendi & phrasis leuitatem seriò perpenderunt, suapte sponte in eandem inciderunt opinionem: nam, cum eodem ferè tempore Cõmentarium quendam ipse diuulgarem, pro certo statuerunt, si ea animus fuisset dimulgandi, memetipsum voluisse, meo proprio nomine, nequaquam nomine* Pticket, *mea propria opera omnibus inspicienda præbuisse: Idcirco quasi vna voce conclamauerunt omnes, Illud ipsum opus tum natura sua maximè nequam esse & pudendum, cum ab opifice scelerato & mendaci proficiscatur:*

Circumuertit enim vis & iniuria quemque,
Atque vnde exorta est, in eum plærunque reuertit.

In hisce sicut in alijs meis Relationibus, hoc mihi præcipuè curæ fuit, vt (quantum me penès erat) Obscuritatem, Ambiguitatem, Periclitationẽ, Nouitatem & Prolixitatem auersarer. 1. Obscuritatem, quæ sanè haud absimilis tenebrarum est, in quibus miserè solis radijs viduos necesse est hùc illùc, vltrò citroquè, vsquequaquè deuiare. 2. Ambiguitatem, in qua non vt supra lucis inopia laboramus, sed varijs meatuum anfractibus, & irremeabilibus dubitationum mæandris ita distracti sumus, vt quid sequendum, quid fugiendũ sit, prorsus ignoremus. 3. Periclitationem, ne quicquam omninò in medium proferrem, quod quæstiones magis nouas & controuersias ad turbandũ, quàm tranquillitatem & concordiam ad stabiliendum hunc fluctuantem hominum statum procreet (non enim conuenit vt huiusmodi Commentarij illud agant quod plerunque solent hyberni soles, qui densiores nebulas & fuliginosiores concitant, quàm quas eijsdem radiorum viribus dispergere valeant) aut quod

Lecto-

Lectori.

Lectorem meum vel in primaria erroris & dubitationis limina quoquo modo ducat. 4. *Nouitatem, eò quòd id maximè laborandum arbitror, vt nouas quaſcunque interpretatiunculas & priuatas opiniones (quæ, ſi ad amuſſim noſtrorum librorum & antiquorum exempla applicentur, nequaquam quadrant) periculoſiſſimas, & ſtudijs noſtris indigniſſimas euitem: nam* periculoſum exiſtimo quod bonorum virorum non comprobatur exemplo. 5. *Prolixitatem, cum in Relationibus hoc imprimis ſit optandum, vt ſint adeo compendiariò breues, prout neceſſitas reſque ipſa ferre poteſt; ſicut enim* languor prolixus grauat medicum, ita Relatio prolixa grauat lectorem.

Quòd caſus ille de Poſtnatis reliquis eſt prolixior, confitendum eſt, at vero tres, quæ fuſiorem me fecerunt in eo renuntiando, cauſæ grauiores acceſſerunt. 1. *Quòd in Camera Scaccarij caſus erat diſcuſſus, ad quē quidem diſcutiendū omnes Angliæ Iudices (quemadmodū leges et cōſuetudines poſtulāt) ſigillatim, apertè, & copioſè ſunt argumentati.* 2. *Quia non alius fuit vſpiam caſus in Camera Scaccarij quod quiſpiam nunc temporis virorum cogitatione poteſt aſſequi, quem tot inſimul Iudices tamque elaboratè, pertractārunt: non enim Dominus Cancellarius ſolum, ſed alij etiam quatuordecim Iudices in eodem caſu vires ſuas & ingenia limatè exercuerunt.* 3. *Quia tanta fuit varietas atque copia tàm materiæ rationum & argumentorū ponderibus libratæ, quàm formæ multis excellentium ingeniorum, mirabiliumq; artium ornamentis decoratæ, vt breuitèr & ſuccinctè magis referri non poſſe videbatur.*

Nunc demum, hoc vlterius tantum votis amplector meis; Primum vt ſtudioſus Lector quantam ego quidem (ſi non meum me deluſerit iudicium) in componendis & formandis, tantam ille itidem reuera in legendis hiſce Relationibus vtilitatem ſimul & voluptatem excerpat; Deinde vt quoad eius fieri poſſit, quamplurima legibus ipſis definiantur, quam pauciſſima vero Iudicis arbitrio relinquantur.

DEO,
PATRIAE,
TIBI.

I Had no ſooner (good Reader) made an end of the ſixt part of my Commentaries or Reports, but the greateſt caſe that euer was argued in the Hall of Weſtminſter began to come in queſtion, and afterwards was argued by all the Iudges of England. This great caſe (for that memorie is *infida & labilis*) whiles the matter was recent & freſh in mind, and almoſt yet ſounding in the eare, I ſet downe in writing, out of my ſhort obſeruations which I had taken of the effect of euery argument, (as my manner is, and euer hath beene) a ſummarie memoriall of the principall authorities and reaſons of the reſolutions of that caſe, for mine owne priuat ſollace and inſtruction. I neuer thought to haue publiſhed the ſame, for that it was not like to giue any direction in like caſes that might happen, (the chiefeſt end of publiſhing Reports) it is of his owne nature ſo like the Phœnix, and ſo ſingular and rare in accident, as the vnion of two famous and auncient kingdomes in ligeance and obedience vnder one great and mightie Monarch. Now when I had ended it for my priuat, I was by commandement to beginne againe (a matter of no ſmall labour and difficultie) for the publike. For certainly, that ſuccinct method and collection that will ſerue for the priuat memorial or repertory, eſpecially of him that knew and heard al, will nothing become a publique Report for the preſent & al poſteritie, or be ſufficiēt to inſtruct thoſe readers, who of thēſelues know nothing, but muſt be inſtructed by the report onely in the right rule & reaſon of the caſe in queſtion. And as *vndagignit vndam*, ſo commonly one labour commeth not alone: this brought on anorher with it; for ſeeing this caſe was of ſo rare a qualitie, I thought good as well for thine inſtruction and vſe (good Reader) as for the repoſe and quiet of many, in reſoluing of queſtions and doubts (wherein there hath beene great diuerſitie of opinions) concerning their eſtates and poſſeſſions, to publiſh ſome

ſome others that are common in accident, weightie in conſequent, and yet neuer reſolued or adiudged before: So as it is now verified in this, that which hath been ſaid of old, *Labor labori laborem addit.*

With this ſeauenth worke or part of my Reports (whereunto Almightie God of his goodneſſe, hath in this ſhort time, amongſt many other publike imployments, enabled me) I haue out of my loue vnto all my deere countrie men, of what perſuaſion in religion ſoeuer they bee, thought good to giue them all a caueat or forewarning in a caſe of great importance, that deepely and dangerouſly concerns them all in ſo high a point, that in the firſt degree it is a *Premunire*, and in the ſecond high treaſon. And yet many men, without all feare (by reaſon I thinke they know not the law) runne into the danger thereof almoſt euery day. I muſt confeſſe, that this is a writing or a ſcribling world, *quotidie plures, quotidie peius ſcribunt.* And ſure I am that no man can either bring ouer thoſe bookes of late written (which I haue ſeene) from Rome or Romaniſts, or read them, and iuſtifie them, or deliuer them ouer to any other with a liking and allowance of the ſame (as the authors end and deſire is they ſhould) but they runne into deſperate dangers and downefals; for the firſt offence is a Præmunire, which is to be adiudged to be out of the Kings protection, to looſe all their lands and goods, and to ſuffer perpetuall impriſonment; and they that offend the ſecond time therein, incurre the heauie danger of high Treaſon. Theſe bookes haue glorious and goodly titles, which promiſe directions for the conſcience, and remedies for the ſoul, but there is *mors in olla*: They are like to Apothecaries boxes, *quorum tituli pollicentur remedia, ſed pixides ipſæ venena continent*, whoſe titles promiſe remedies, but the boxes themſelues containe poyſon. This fore-warning I giue out of conſcience and care of their ſafetie, that blindfold might fall into ſo great danger by their meanes whom they ſo much reuerence. I am not afraid of gnats that can pricke and cannot hurt, nor of drones that keep a buzzing, and would but cannot ſting.

Non metuo pulicis ſtimulos fuciq; ſuſurros.

And little doe I eſteeme an vncharitable and malitious practiſe in publiſhing of an erronious and ill ſpelled Pamphet, vnder the name *Pricket*, and dedicating it to my ſingular good Lord and father in law, the Earle of Exceſter, as a Charge giuen at the Aſſiſes holden at the citie of Norwich, 4. *Auguſti*, 1606. which I proteſt was not onely publiſhed without my priuitie, but (beſides the omiſſion of diuers princi-

principall matters) that there is no one period therein expreſſed in that ſort & ſenſe that I deliuered it: wherein it is worthy of obſeruation how their expectation (of ſcandalizing me) was wholly deceiued, for behold the cataſtrophe. Such of the readers as were learned in the laws, finding not onely groſſe errours and abſurdities in law, but palpable miſtakings in the verie words of art, and the whole context of that rude and ragged ſtile, wholly diſſonant (the ſubiect being legall) from a lawyers dialect, concluded, that *inimicus & iniquus homo ſuper ſeminauit zizania in medio tritici*: the other diſcreet and indifferent readers, out of ſence and reaſon, found out the ſame concluſion, both in reſpect of the vanitie of the phraſe, and for that, I publiſhing about the ſame time one of my Commentaries, would, if I had intended the publication of any ſuch matter, haue done it my ſelfe, and not to haue ſuffered any of my works to paſſe vnder the name of *Pricket*, and ſo *vna voce conclamauerunt omnes*, that it was a ſhamefull and ſhameleſſe practiſe, and the author thereof, to be a wicked and malitious falſarie.

Circumuertit enim vis & iniuria quemq;
Atq; vnde exorta eſt, ad eum plerumq; reuertit.

In theſe and the reſt of my Reports, I haue (as much as I could) auoided obſcuritie, ambiguitie, ieoperdie, noueltie, and prolixitie: 1. Obſcuritie, for that is like vnto darkeneſſe, wherein a man, for want of light, can hardly with all his induſtrie diſcerne any way. 2. Ambiguitie, where there is light ynough, but there bee ſo many winding and intricat wayes, as a man, for want of direction, ſhall bee much perplexed and intangled, to find out the right way. 3. Ieoperdie, either in publiſhing of any thing, that might rather ſtirre vp ſuits and controuerſies in this troubleſome world, than ſtabliſh quietneſſe and repoſe betweene man and man (for a Commentarie ſhould not be like vnto the Winterly ſunne, that raiſeth vp greater and thicker miſts and fogges, than it is able to diſperſe) or in bringing the reader, by any meanes, into the leaſt queſtion of perill or daunger at all. 4. Noueltie, for I haue euer holden all new or priuate interpretations, or opinions, which haue no ground or warrant out of the reaſon or rule of our bookes, or former preſidents, to bee daungerous, and not worthy of any obſeruation: for *periculoſum exiſtimo quod bonorum virorum non comprobatur exemplo.* 5. Prolixitie, for a report ought to bee no longer than the matter requireth, and as *Languor prolixus grauat medicum, ita relatio prolixa grauat lectorem.* The caſe of *Poſtnati*, I confeſſe, is longer than

than any of the reſt, and that for three cauſes: Firſt, for that it was an Exchequer chamber caſe, for deciding whereof all the Iudges of England (as the law doth require) did argue openly and at large. Secondly, for that neuer any caſe within mans memorie, was argued by ſo many Iudges in the Exchequer chamber, as this was, there hauing argued the Lord Chauncelor and fourteene Iudges. Thirdly, for the varietie as well of the important matter, as of the ſeuerall kinds of excellent learning and knowledge, deliuered in the arguments of this caſe. Finally, with theſe wiſhes and deſires I conclude, Firſt, that the ſtudious Reader might indeed receiue as great profit and delight in reading this worke, as I did (vnleſſe mine owne iudgement deceiue me) in compoſing and framing thereof: Secondly, that *quoad eius fieri poſſit, quam plurima legibus ipſis definiantur, quam pauciſsima vero Iudicis arbitrio relinquantur.*

Poſtnati.

Caluins caſe, Trin̄ 6. Iacobi Regis.

IAcobus dei grat̄ Angł,Scotię,Franc', & Hiberniæ Rex,fidei defenſor &c. Vic' Midd' Salut̄. Queſtus eſt nobis Robertus Caluyn genet̄, quòd Richardus Smith & Nicholaus Smith iniuſtè & ſine iudicio diſſeiſ. eum de libero tenemẽto ſuo in Haggard, aliàs Haggerſton, aliàs Aggerſton, in paroch' Sancti Leonardi in Shorditch infra triginta annos iamvltim̄ elapſos. Et ideo tibi p̄cipimus quòd ſi p̄dictus Robert̄ fecerit te ſecurum de clameo ſuo proſ. tunc fac' tenem̄tum ill̄ reſeiſ. de catallis quæ in ipſo capt̄ fuerint, & ipſum tenem̄tum cum catallis eſſe in pace vſque diem Iouis proxim̄ poſt quinden̄ Sancti Martini proxim̄ futur̄. Et interim fac' xij. liber̄ & legał homines de viſn̄ illo videre tenement̄ ill̄, & nomina eorum imbr̄. Et ſumm̄ eos p̄ bonos ſumm̄ quòd tunc ſint coram nobis vbicunque tunc fuerimus in Angł parat̄ inde facere recognit̄. Et pone per vad' & ſaluos pleg' p̄dictos Richardum & Nicholaum vel balliuos ſuos ſi ipſi inuent̄ non fuerint, quod tunc ſint ibi aud' ill̄ recognit̄. Et habeas ibi ſumm̄, nomina pleg', & hoc breue. T.me ipſo apud Weſtm̄ tertio die Nouēbris, Anno regni noſtri Angł, Franc',& Hiber̄ quinto,& Scotiæ quadrageſimo primo.

Pro quadragint̄ ſolid' ſolut̄ in Hanaperio.

Kindeſley.

Aſſiſa ven̄ recogn̄ ſi Richardus Smith & Nicholaus Smith iniuſtè & ſine iudicio diſſeiſ. Robertum Caluyn genet̄ de libero ten̄to ſuo *Midd'.*

in Haggard,alias Haggerſton, alias Aggerſton in parochia Sancti Leonardi in Shorditch infra triginta annos iam vltimos elapſos: Et vnde idem Robertus,qui infra ætatem viginꝯ & vnius annoꝝ exiſtit, ꝑ Iohannem Parkinſon & Willihelm̃ Parkinſon gardianos ſuos ꝑ cur̃ dñi regis hic ad hoc coniunctim & diuiſim ſpecialiter admiſſ. queritur quod diſſeiſ.eum de vno meſſ.cum pertiñ &c. Et prędicti Richardus & Nicholaus ꝑ Willihelm̃ Edwards attornat̃ ſuum veñ, & dicunt quod prædictus Robertus ad br̃e ſuum prędictum reſpõderi non debet, quia dicũt, quod prædictus Robertus eſt alienigeñ natus quinto die Nouembris anno regni dñi regis nunc Anglię, Franciæ,& Hiberniæ tertio, & Scotiæ triceſimo nono apud Edenborough infra regnum ſuum Scotiæ ꝑd', ac infra ligeanc' dicti dñi Regis dicti regni ſui Scotiæ, ac extra ligeanc' dicti domini Regis regni ſui Angliæ. Quodque tempore natiuitatis ꝑdicti Roberti Caluyn ac diu antea & continue poſtea prædictum regnũ Scotiæ ꝑ iura,leges,& ſtatuta eiuſdem regni propria, & non per iura,leges,vel ſtatuta huius Regni Angliæ, regulat̃ & gubernat̃ fuit & adhuc eſt. Et hoc parat̃ ſunt verificare,vnde pet̃ iudicium ſi prędictus Robertus ad breue ſuum prędictum reſponderi debeat &c. Et prædictus Robertus Caluyn dicit,quod prædictum placitum per prędictos Richardum & Nicholaum ſuperius placitat̃ minus ſufficiens in lege exiſtit ad ipſum Robertum a reſponſ. ad br̃eue ſuum prædictum habend' repellend', quodque ipſe idem Robertus ad placit̃ ill' modo & forma prædict̃ placitat̃ neceſſe non habet nec per legem terrę tenetur reſpondere. Et hoc parat̃ eſt verificare, vnde petit iudicium: Et quod prædicti Richardus & Nicholaus ad prædictum breue ipſius Roberti reſpondeant. Et prædicti Richardus & Nicholaus, ex quo ipſi ſufficieñ materiam in lege ad ipſum Robertum a reſponſ.ad breue prædictum habend' repellend' ſuperius allegauer̃ quam ipſi parat̃ ſunt verificare; Quam quidem materiam prędictus Robertus non dedic', nec ad eam aliqualiter reſpondet,ſed verificat̃ ill' penitus admittere omnino recuſat,vt prius pet̃ iudicium ſi prædictus Robertus ad breue ſuum prædictum reſponderi debeat &c. Et, quia cur̃ domini Regis hic de iudicio ſuo de & ſuper pręmiſſ. reddendo nondum adviſatur, dies inde dat̃ eſt partibus ꝑdictis coram domino Rege apud Weſtmonaſter̃ vſque diem Lunæ proxim̃ poſt octab. Sancti Hillarij de iudicio ſuo inde audiendo, eo quod cur̃ domini Regis hic inde nondum &c. Et aſſiſa ꝑdicta remañ capiend' coram eodem domino Rege vſque eundem diem Lunę ibidem &c. Et vicecom̃ diſtring' recogñ Aſſiſæ prædictæ. Et interim fac' viſum &c. Ad quem diem coram domino Rege apud Weſtmonaſter̃ veñ tam prædict̃ Robertus Caluyn per gardianos ſuos prædictos, quam prædicti Richardus Smyth & Nicholaus Smyth per attornat̃ ſuum prædictum. Et, quia cur̃ domini Regis hic de iudi-

dicio

dicio ſuo inde & ſuper premiſſis reddendo nondum aduiſatur, dies inde datꝰ eſt partibus predictis coram domino Rege apud Weſtm̃ vſque diem Lunæ proxim̃ poſt Craſtiñ aſcenſionis domini de iudicio ſuo inde audiend', eo quod cuꝫ domini Regis hic inde nondum &c. Et aſſiſa prædicta remañ vlterius capiend' vſque eundem diẽ Lunæ ibidem &c. Et vicecom̃ ſicut alias diſtring' recogñ aſſiſę p̃d, & interim fac' viſum &c. Ad quem diem coram domino Rege apud Weſtm̃ veñ tam prædictus Robertus Caluin per gardianos ſuos predictos, quam prædicti Richardus Smith & Nicholaus Smith p attornatꝫ ſuum predꝫ &c. Et quia curia &c.

The queſtion of this matter in law was, whether Robert Caluin the plaintife (beeing borne in Scotland ſince the crowne of England deſcended to his Maieſtie) be an alien born, and conſequently diſabled to bring any reall or perſonall action for any lands within the realme of England. After this caſe had beene argued in the court of the kings Bench, at the barre, by the coũſell learned of either partie, the Judges of that court, vpon conference and conſideration of the weight and importance thereof, adiourned the ſame (according to the auncient and ordinarie courſe and order of lawe) into the Exchequer chamber, to bee argued openly there; firſt by counſell learned of either partie, and then by all the Judges of England: where afterwards the caſe was argued by Bacon Sollicitor generall, on the part of the plaintife, and by Laur. Hide for the defendant: and afterward by Hobart Attorney generall for the plaintife, and by Serieant Hutton for the defendant: and in Eaſter terme laſt, the caſe was argued by Heron puiſne baron of the Exchequer, & Foſter puiſne Judge of the court of common Pleas: and on the ſecond day appointed for this caſe, by Crooke puiſne Judge of the K. Bench, and Altham baron of the Exchequer: the third day by Snigge baron of the Exchequer, and Williams one of the Judges of the K. Bench: the fourth day by Daniel one of the Judges of the court of common Pleas, and by Yeluerton one of the Judges of the K. Bench: And in Trinitie terme following, by Warbarton one of the Judges of the common Pleas, and Fenner one of the Judges of the kings Bench: and after argued Walmeſley one of the Judges of the common Pleas, and Tanfield chiefe baron: and at two ſeuerall daies in the ſame Terme, Coke chiefe Juſtice of the common Pleas, Fleming chiefe Juſtice of the kings Bench, and Sir Thomas Egerton, Lord Elleſmere, Lord Chauncellor of England argued the caſe (the like plea in diſabilitie

The queſtion.

How this caſe hath proceeded.

of Robert Caluins perſon beeing pleaded mutatis mutandis in the Chauncerie in a ſuite there for euidence concerning lands of inheritance, and by the Lo. Chancellor adiourned alſo into the Exchequer chamber, to the end that one rule might ouer-

The argu-ments and obiections on the part of the def.

rule both the ſaid caſes.) And firſt (for that I intend to make as ſummarie a Report as I can) I will at the firſt ſet downe ſuch arguments and obiections as were made and drawne out of this ſhort record againſt the plaintife, by thoſe that argued for the defendants. It was obſerued, that in this plea there were foure Nownes, quatuor nomina, which were called nomina operatiua, becauſe from them all the ſaid arguments and obiections on the part of the defendants were drawne: that is to ſay, ¶1. Ligeantia (which is twice repeated in the plea, for it is ſaid, Infra ligeantiam domini regis regni ſui Scotiæ, & extra ligeantiam dñi regis regni ſui Angliæ.) ¶2. Regnum (which alſo appeareth to be twice mentioned, viz. regnũ Angliæ, and regnũ Scotiæ.) ¶3. Leges (which are twice alledged, viz. leges Angliæ, and leges Scotię, two ſeuerall and diſtinct lawes.) ¶4. Alienigena (which is the concluſion of all, viz. that Robert Caluin is Alienigena.) By the firſt it appeareth, that the defendãts doe make two ligeances, one of England, and another of Scotland, and from theſe ſeuerall ligeances two arguments were framed, which briefely may be concluded thus. Whoſoeuer is borne infra ligeantiam, within the ligeance of king James of his kingdome of Scotland, is Alienigena, an alien borne, as to the kingdome of England: but Robert Caluin was borne at Edenborough, within the ligeance of the king of his kingdome of Scotland; therefore Robert Caluin is Alienigena, an alien borne, as to the kingdome of England. 2. Whoſoeuer is borne extra ligeantiam, out of the ligeance of king James of his kingdome of England, is an alien as to the kingdome of England: but the plaintife was borne out of the ligeance of the king of his kingdom of England, therfore the plaintife is an alien &c. Both theſe arguments are drawne from the very words of the plea, viz. Quod prædictus Robertus eſt alienigena, natus 5. Nouembris anno regni domini regis nunc Angliæ &c. tertio apud Edenborough infra regnũ Scotiæ, ac infra ligeantiã dicti dom regis dicti regni ſui Scotię, ac extra ligeãtiã dicti dñi regis regni ſui Angliæ. From the ſeuerall kingdomes, viz. regnum Angliæ, and regnum Scotiæ, three arguments were drawne: 1. Quando duo iura (imo duo regna) conccurunt in vna perſona, æquum eſt ac ſi eſſent in diuerſis: but in the K. perſon there concurre two diſtinct & ſeuerall kingdomes, therfore it is al one as if they were in diuers perſõs,

and

and conſequently the plaintife is an alien as all the Antenati be, for that they were borne vnder the ligeance of another king. 2. Whatſoeuer is due to the kings ſeuerall politique capacities of the ſeuerall kingdoms is ſeuerall and diuided: but ligeance of each nation is due to the kings ſeuerall politique capacities of the ſeuerall kingdoms; Ergo, The ligeance of each nation is ſeuerall and diuided, and conſequently the plaintife is an alien, for that they that be borne vnder ſeuerall ligeances are aliens one to another. 3. Where the king hath ſeuerall kingdoms by ſeuerall titles and diſcents, there alſo are the ligeances ſeuerall: but the king hath theſe two kingdomes by ſeuerall titles and diſcents; therefore the ligeances be ſeuerall. Theſe 3. arguments are collected alſo from the words of the plea before remembred.

From the ſeuerall and diſtinct lawes of either kingdom, they did reaſon thus. 1. Euery ſubiect that is borne out of the extent and reach of the lawes of England, cannot by iudgement of thoſe lawes be a naturall ſubiect to the king, in reſpect of his kingdom of England: but the plaintife was borne at Edenborough out of the extent and reach of the lawes of England; therefore the pl by the iudgement of the lawes of England cannot be a naturall ſubiect to the king, as of his kingdom of England. 2. That ſubiect, that is not at the time and in the place of his birth inheritable to the lawes of England, cannot be inheritable or partaker of the benefits and priuiledges giuen by the lawes of England: but the plaintife at the time and in the place of his birth was not inheritable to the lawes of England (but onely to the lawes of Scotland;) therefore hee is not inheritable, or to be partaker of the benefits or priuiledges of the lawes of England. 3. Whatſoeuer appeareth to be out of the iuriſdictiõ of the lawes of England, cannot be tried by the ſame lawes: but the plaintifs birth at Edenborough is out of the iuriſdiction of the lawes of England; therefore the ſame cannot be tried by the laws of Englãd. Which three arguments were drawne from theſe words of the plea, viz. Quodque tẽpore natiuitatis prædicti Roberti Caluin ac diu antea, & continue poſtea, p̃dictum regnum Scotiæ p̃ iura, leges, & ſtatuta eiuſdẽ regni propria, & non per iura, leges, ſeu ſtatuta huius regni Angliæ regulat̃ & gubernat̃ fuit, & adhuc eſt. From this word Alienigena they argued thus. Euery ſubiect that is alienæ gentis (id eſt) alienæ ligeantiæ, eſt alienigena: but ſuch a one is the plaintife; therefore &c. And to theſe 9. arguments, all that was ſpoken learnedly & at large by thoſe that argued againſt the pl may be reduced.

But it was reſolued by the L. Chauncellor & twelue Iudges, viz. the two chiefe Iuſtices, the chiefe baron, Iuſtice Fenner, Warbarton, Yelverton, Daniel, Williams, baron Snig, baron Altham, Iuſtice Crooke, and baron Heron, that the plaintife was no alien, and conſequently that he ought to be anſwered in this Aſſiſe by the defendant.

How this caſe was argued by the L. Chancelor and the Iudges.

This caſe was as elaborately, ſubſtantially, and iudicially argued by the Lord Chauncellor, and by my brethren the Iudges, as I euer read or heard of any; and ſo in mine opinion the weight and conſequence of the cauſe, both in præſenti, & perpetuis futuris temporibus iuſtly deſerued: for though it was one of the ſhorteſt and leaſt that euer we argued in this court, yet was it the longeſt and weightieſt that euer was argued in any court; the ſhorteſt in ſillables, and the longeſt in ſubſtance; the leaſt for the value (and yet not tending to the right of that leaſt) but the weightieſt for the conſequent, both for the preſent, and for al poſteritie. And therfore it was ſaid, that thoſe that had written de foſſilibus did obſerue, that gold hidden in the bowels of the earth, was in reſpect of the maſſe of the whole earth, paruũ in magno: but of this ſhort plea it might be truely ſaid (which is more ſtrange) that here was magnum in paruo. And in the arguments of thoſe that argued for the plaintife I eſpecially noted, That albeit they ſpake according to their owne heart, yet they ſpake not out of their owne head and inuention: wherein they followed the counſell giuen in Gods booke, Interroga priſtinam generationem (for out of the old fields muſt come the new corne) & diligenter inueſtiga patrum memoriam, and diligently ſearch out the iudgements of our forefathers: and that for diuers reaſons. Firſt on our owne part, Heſterni enim ſumus & ignoramus, & vita noſtra ſicut vmbra ſuper terram: for wee are but of yeſterdaie (and therefore had need of the wiſedome of thoſe that were before vs) and had beene ignorant (if we had not receiued light and knowledge from our forefathers) and our daies vpon the earth are but as a ſhadow, in reſpect of the old and auncient daies and times paſt, wherein the lawes haue beene by the wiſedome of the moſt excellent men, in many ſucceſſions of ages, by long and continuall experience (the triall of right and truth) fined and refined, which no one man (beeing of ſo ſhort a time) albeit hee had in his head the wiſedome of all the men in the world, in any one Age could euer haue effected or attayned vnto. And therefore it is optima regula, qua nulla eſt verior aut firmior in iure, Neminem oportet eſſe ſapientiorem legibus: no man ought to

Iob. 8. 8.

take

take vpon him to be wiſer than the lawes. Secondly, in reſpect of our fore-fathers: Ipſi (ſaith the text) docebunt te, & loquentur tibi, & ex corde ſuo proferunt eloquia, they ſhall teach thee, and tell thee, and ſhall vtter the words of their heart, without al equiuocation or mentall reſeruation, they (I ſay) that cannot bee daunted with feare of any power aboue them, nor be dazeled with the applauſe of the popular about them) nor fretted with any diſcõtentment (the matter of oppoſition and contradiction) within them, but ſhall ſpeake the words of their heart, without all affection or infection whatſoeuer.

Alſo in their arguments of this caſe concerning an alien, they told no ſtrange hiſtories, cited no forreine lawes, produced no alien preſidents, and that for two cauſes: the one, for that the lawes of England are ſo copious in this point, as God willing by the report of this caſe ſhall appeare: the other, leaſt their arguments cõcerning an alien born, ſhould becom forrein, ſtrange, and an alien to the ſtate of the queſtion, which being queſtio iuris, concerning freehold, and inheritance in England, is onely to bee decided by the lawes of this Realme. And albeit I concurred with thoſe that adiudged the plaintife to be no alien, yet doe I find a meere ſtranger in this caſe, ſuch a one as the eie of the law (our bookes, and booke caſes) neuer ſaw, as the eares of the law (our Reporters) neuer heard of, nor the mouth of the law (for Iudex eſt lex loquẽs) the iudges our fore-fathers of the law neuer taſted: I ſay, ſuch a one, as the ſtomacke of the law, our exquiſit & perfect Records of pleadings, entries, & iudgements (that make equall and true diſtribution of all caſes in queſtion) neuer digeſted. In a word, this little plea is a great ſtrãger to the lawes of England, as ſhall manifeſtly appeare by the reſolution of this caſe. And now that I haue taken vpon me to make a report of their arguments, I ought to doe the ſame as truely, fully, and ſincerely, as poſſibly I can: howbeit, ſeeing that almoſt euery Iudge had in the courſe of his argument a peculiar method, and I muſt onely hold my ſelfe to one, I ſhall giue no iuſt offence to any, if I challenge that which of right is due to euery Reporter, that is, to reduce the ſumme & effect of all to ſuch a method, as vpon conſideration had of all the arguments, the Reporter himſelfe thinketh to be fitteſt and cleereſt for the right vnderſtãding of the true reaſons and cauſes of the iudgement and reſolution of the caſe in queſtion.

The method that the Reporter doth vſe.

In this caſe 5. things did fall into conſideration. ¶ 1. Ligeantia. ¶ 2. Leges. ¶ 3. Regna. ¶ 4. Alienigena. ¶ 5. What legall

what things did fall into conſideratiõ in this caſe

legall inconueniences would enſue on either ſide.

1. Concerning ligeance: 1. It was reſolued what ligeance was: 2. How many kinds of ligeances there were: 3. Where ligeance was due: 4. To whom it was due: and laſtly, How it was due.

2 For the lawes: 1. That ligeance, or obedience of the ſubiect to the ſoueraigne, is due by the law of nature: 2. That this law of nature is part of the lawes of England: 3. That the law of nature was before any iudiciall or municipall law in the world: 4. That the law of nature is immutable and cannot be changed.

3 As touching the kingdoms: How far forth by the act of law the vnion is already made, and wherein the kingdomes doe yet remaine ſeperat and diuided.

4 Of Alienigena, an alien borne: 1. What an alien borne is in law: 2. The diuiſion and diuerſitie of aliens: 3. Incidents to euery alien: 4. Authorities in law: 5. Demonſtratiue concluſions vpon the premiſſes, that the plaintife can be no alien.

5 Vpon due conſideration had of the conſequent of this caſe: What inconueniences legall ſhould follow on either partie.

And theſe ſeuerall parts I will in this Report purſue in ſuch order as they haue beene propounded: and firſt de Ligeantia.

The 1. generall part. What ligeance is.

¶ 1. Ligeance is a true and faithfull obedience of the ſubiect due to his ſoueraigne. This ligeance and obedience is an incident inſeperable to euery ſubiect; for as ſoone as he is borne hee oweth by birth right ligeance and obedience to his ſoueraigne. Ligeantia eſt vinculum fidei: and Ligeantia eſt quaſi legis eſſentia. Ligeantia eſt ligamentum, quaſi ligatio mentium: quia ſicut ligamentum eſt connexio articulorum & iuncturarum &c. As the ligatures or ſtrings do knit together the ioynts of all the parts of the bodie, ſo doth ligeance ioyne together the ſoueraigne and all his ſubiects, quaſi vno ligamine. Glanuill, who wrote in the raigne of Hen. 2. lib. 9. cap. 4. ſpeaking of the connexion which ought to be betweene the Lord and tenant that holdeth by homage, ſaith, That mutua debet eſſe domini & fidelitatis connexio, ita quod quantum debet domino ex homagio, tantũ illi debet dominus ex dominio, præter ſolã reuerentiã, and the Lord (ſaith he) ought to defend his tenant. But betweene the ſoueraigne and the ſubiect there is without compariſon a higher and greater connexion: for as the ſubiect oweth to the king his true and faithful ligeance & obedience, ſo the ſoueraigne is to gouerne and protect his ſubiects,

regere

regere & protegere subditos suos: so as betweene the soueraigne and subiect there is duplex & reciprocum ligamen; quia sicut subditus regi tenetur ad obedientiam, ita rex subdito tenetur ad protectionem: meritò igitur ligeantia dicitur a ligando, quia continet in se duplex ligamen. And therefore it is holden in 20.H.7.8. that there is a liege or ligeance betweene the King and the subiect. And Fortescue cap.13. Rex ad tutelam legis, corporum, & bonorum erectus est. And in the acts of Parliament of 10.R.2. cap.5. & 11 R.2. cap.1. 14.H.8.cap.2.&c. Subiects are called liege people: and in the acts of Parliament in 34.H.8.cap.1.& 35.H.8.cap.3.&c. the King is called the liege Lord of his Subiects. And with this agreeth M. Skene in his booke de expositione verborũ (which booke was cited by one of the Judges which argued against the plaintife) Ligeance is the mutuall bond and obligation betweene the K. and his subiects, whereby subiects are called his liege subiects, because they are bound to obey and serue him, and hee is called their liege Lord, because he should maintaine and defend them. Whereby it appeareth, that in this point the law of England, & of Scotland is all one. Therefore it is truly said, that protectio trahit subiectionem, & subiectio protectionem And hereby it plainly appeareth, that ligeance doth not begin by the oath in the Leet; for many men owe true ligeãce that neuer were sworn in a Leet, and the swearing in a Leet maketh no denization, as the booke is adiudged in 14.H.4.fol.19. This word Ligeance is well expressed by diuers seuerall names or Synonima which wee find in our bookes. Sometime it is called the obedience or obeysance of the subiect to the king, obedientia regi, 9.E.4.7. 9.E.4.6. 2.R.3.2. in the booke of Entries, Eiectione firmæ 7. 14. H.8.ca.2. 22.H.8.ca.8. &c. Sometime he is called a naturall liege man that is born vnder the power of the King, sub potestate regis, 4.H.3.tit̃ Dower. Vide le statute de 11.E.3.cap.2. Sometime ligeance is called faith, Fides, ad fidem regis, &c. Bracton who wrote in the raigne of H.3.lib. 5. tractat̃ de exceptionibus, c.24.fol. 427. Est etiam alia exceptio quæ cõpetit ex ꝑsona querẽtis, ꝓpter defectũ nationis, vt si quis alienigena qui fuit ad fidẽ regis Franc' &c. And Fleta (which book was made in the raigne of E.1.) agreeth therewith; for li.6.c.47. de exceptione ex omissioñ ꝑticipis it is said, vel dicere potuit, ꝙ nihiliuris clamare poterit tanquã ꝑticeps, eo ꝙ est ad fidẽ regis Francię, quia alienigenę repelli debent in Anglia ab agẽdo, donec fuer̃ ad fidẽ regis Angl'. Vide 25.E.3. de natis vltra mare. foy & ligeance del Roy Dengliterre: & Littl. lib.2.c. Homage, salue le foy, q̃ ieo doy a nr̃e sñr le Roy: & Glanuil, lib.9 c.1. Salua fide debita dño Regi & hæredib⁹ suis. Sometimes ligeance is

called

called ligealtie, 22. Aſſ. Pl. 25. By all which it euidently appeareth, that they that are borne vnder the obedience, power, faith, ligealtie, or ligeance of the king, are naturall ſubiects and no aliens. So as, ſeeing now it doth appeare what ligeãce is, it followeth in order, that we ſpeak of the ſeueral kinds of ligeãce. But herein we need to be very wary, for this caueat the law giueth, vbi lex nõ diſtinguit, nec nos diſtinguere debemus: and certainly lex non diſtinguit, but where omnia mẽbra diuidentia are to be found out and proued by the law it ſelfe.

How many kind of ligeances there be.

¶ 2. There is found in the law 4. kind of ligeãces: the firſt, is ligeãtia naturalis, abſoluta, pura, & indefinita; & this originally is due by nature and birth right, and is called alta ligeantia, and he that oweth this is called ſubditus natus. The 2. is called ligeãtia acquiſita, not by nature but by acquiſition or denization, being called a denizen, or rather donaizon, becauſe he is ſubditus datus. The 3. is ligeãtia localis, wrought by the law, and that is when an alien that is in amitie commeth into England, becauſe as long as hee is within England, he is within the kings protection; therefore ſo long as he is there, he oweth vnto the king a locall obedience or ligeance, for that the one (as it hath bin ſaid) draweth the other. The 4. is a legal obedience or ligeãce, which is called legal, becauſe the municipall lawes of this realme haue preſcribed the order and forme of it; & this to be done vpon oath at the Court or Leet.

Ligeantia naturalis.

The firſt, that is, ligeance naturall &c. appeareth by the ſaid acts of Parliament, wherein the king is called natural liege Lord, & his people natural liege ſubiects: this alſo doth appeare in the inditements of treaſon (which of al other things are the moſt curiouſly and certainly indited and penned:) for in the inditement of the Lo. Dacre in 26. H. 8 it is ſaid, p̃dictus dñus Dacre debitũ fidei & ligeantiæ ſuæ q̃ præfato dño regi naturaliter & de iure impendere debuit, minime curans &c. And Reginald Poole was indited in 30. H. 8. for committing treaſon cont̃ dñm regẽ ſupremum & naturalem dñm ſuũ. And to this end were cited the inditemẽt of Edward duke of Somerſet in 5. E. 6. and many others both of ancient and later times. But in the inditement of treaſon of Iohn Dethicke in 2. & 3. Ph. & Mar. it is ſaid, q̃ p̃d Iohannes machinãs &c. p̃d dñm Philippũ & dñam Mariam ſupremos dños ſuos, and omitted (naturales) becauſe king Philip was not his naturall liege Lord. And of this point more ſhall be ſaid when wee ſpeake of locall obedience.

Ligeantia acquiſita.

The ſecond is ligeantia acquiſita, or denization. And this in the bookes & records of the law appeareth to be threefold: 1. abſolute, as the common denizations bee, to them and their heires

heires without any limitation or reſtraint: 2. limited, as when the king doth graunt letters of denization to an alien, and to the heirs males of his body, as it appeareth in 9. E. 4. fol. 7. in Baggots caſe; or to an alien for terme of his life, as was graunted to Iohn Reynel, 11. H. 6. 3. it may be graunted vpon condition; for cuius eſt dare, eius eſt diſponere, whereof I haue ſeene diuers preſidents. And this denization of an alien may be effected 3. maner of waies: by parliament, as it was in 3. H. 6. 55. in Dower: by letters patents, as the vſuall manner is: and by conqueſt, as if the king and his ſubiects ſhould conquer another kingdome or dominion, as wel Antenati as Poſtnati, as wel they which fought in the field, as they which remained at home for defence of their countrey, or imployed elſewhere, are all denizens of the kingdome or dominion conquered. Of which point more ſhall be ſaid hereafter.

3. Concerning the locall obedience, it is obſeruable, that as there is a locall protection on the kings part, ſo there is a locall ligeance of the ſubiects part. And this appeareth in 4. Mar. Br. 32. & 3. & 4. Ph. & Mar Dier 144. Sherley a French man, being in amitie with the king, came into England, and ioyned with diuers ſubiects of this realme in treaſon againſt the king and Queen, and the inditement concluded contra ligeantiæ ſuæ debitum; for hee ought to the king a locall obedience, that is, ſo long as he was within the kings protection: which local obedience, beeing but momentanie and incertaine, is ſtrong enough to make a natural ſubiect; for if he hath iſſue here, that iſſue is a naturall borne ſubiect: à fortiori he that is borne vnder the naturall and abſolute ligeance of the king (which as it hath bin ſaid is alta ligeantia) as the pl' in the caſe in queſtion was, ought to be a naturall borne ſubiect; for localis ligeantia eſt ligeantia infima, & minima, & maxime incerta. And it is to be obſerued, that it is nec cœlum, nec ſolum, neither the clymat nor the ſoyle, but ligeantia and obedientia that make the ſubiect borne: for if enemies ſhould come into the realme, and poſſeſſe a towne or fort, and haue iſſue there, that iſſue is no ſubiect to the king of England, though he be borne vpon his ſoile, and vnder his meridian, for that he was not borne vnder the ligeance of a ſubiect, nor vnder the protection of the k. And concerning this locall obedience, a preſident was cited in Hil' 36. Elizab. when Stephano Farrara de Gama, and Emanuell Lewes Tinoco, two Portugals borne, comming into England vnder Queene Elizabeths ſafe-conduct, and liuing here vnder her protection, ioyned with doctor Lopez in treaſon within this

Ligeantia localis.

this Realme againſt her Maieſtie: And in this caſe two points were reſolued by the Iudges: Firſt, that their indictment ought to begin, that they intended treaſon contra dñam Reginam, &c. omitting theſe words (naturalem dñam ſuam) and ought to conclude contra ligeantiæ ſuæ debitum. But if an alien enemie come to inuade this realme, and be taken in warre, he cannot be indicted of treaſon: for the indictmẽt cannot conclude contra ligeantiæ ſuæ debitum, for he neuer was in the protection of the king, nor euer ought any maner of ligeance vnto him, but malice and enmitie; and therefore he ſhall be put to death by martiall law. And ſo it was in anno 15. H.7. in Parkin Warbecks caſe, who beeing an alien borne in Flaunders, fained himſelfe to be one of the ſons of Ed. the fourth, and inuaded this Realme with great power, with an intent to take vpon him the dignitie royall: but beeing taken in the warre, it was reſolued by the Iuſtices, that he could not bee puniſhed by the common law: but before the Conſtable and Marſhall (who had ſpeciall commiſſion vnder the great Seale, to heare and determine the ſame according to martial law) hee had ſentence to be drawne, hanged, and quartered, which was executed accordingly. And this appeareth in the booke of Griffeth Atturney generall, by an extract out of the booke of Hobart, Atturney generall to king H.7.

Ligeantia Legalis.

4 Now are wee to ſpeake of legall ligeance, which in our bookes, viz. 7. E. 2. tit Auowrie 211. 4. E. 3. fol. 42. 13. E. 3. tit Auowrie 120. &c. is called Suit Royal, becauſe that the ligeance of the ſubiect is onely due vnto the king. This oath of ligeance appeareth in Britton, who wrot in anno 5. E. 1. cap. 29.) and is yet commonly in vſe to this day in euery Leet) and in our bookes: the effect whereof is: You ſhall ſweare, that from this day forward, you ſhall be true and faithfull to our Soueraigne Lord King Iames, and his heires, and truth and faith ſhall beare of life and member, and terrene honour, and you ſhall neither know nor heare of any ill or dammage intended vnto him, that you ſhall not defend, So helpe you Almighty God. The ſubſtance and effect hereof is (as hath beene ſaid) due by the law of nature, ex inſtitutione naturæ, as hereafter ſhal appeare: the forme and addition of the oath is, ex prouiſione hominis. In this oath of ligeance 5. things were obſerued: 1. That for the time, it is indefinite, and without limit, from this day forward: 2. Two excellent qualities are required, that is, to be true and faithfull: 3. To whom? to our Soueraigne Lord the King and his heires: (And albeit Britton doth ſay, to the king of England, that is ſpoken propter excellentiam, to deſigne the perſon, and not

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to conſine the ligeance: for a Subiect doth not ſweare his ligeance to the King, onely as King of England, and not to him as King of Scotland, or of Ireland &c. but generally to the King:) 4. in what manner? and faith and troth ſhall beare &c. of life and member; that is, vntill the letting out of the laſt drop of our deareſt heart blood: 5. Where, and in what places ought theſe things to be done? in all places whatſoeuer; for, you ſhall neither know nor heare of any ill or damage, &c. that you ſhall not defend &c. ſo as naturall ligeance is not circumſcribed within any place. It is holden 12. H. 7. 18. b. That hee that is ſworne in the Leete, is ſworne to the King for his ligeance, that is, to be true and faithfull to the King: and if he bee once ſworne for his ligeance, hee ſhall not bee ſworne againe during his life. And all Letters patents of denization be, that the patentee ſhall behaue himſelfe tanquam verus & fidelis ligeus domini Regis. And this oath of Ligeance at the Tourne and Leet was firſt inſtituted by King Arthur; for ſo I read, Inter leges ſcī Edouardi Regis ante conqueſtum 3. cap. 35. Et quod omnes principes & comites, proceres, milites, & liberi homines debent iurare &c. in Folkemote, & ſimiliter omnes proceres regni, & milites, & liberi homines vniuerſi totius regni Britaniæ facere debent in pleno Folkemote fidelitatem domino Regi &c. Hanc legem inuenit Arthurus qui quondam fuit inclitiſſimus Rex Britonum &c. huius legis authoritate expulit Arthurus Rex Saracenos & inimicos a regno &c. & huius legis authoritate Etheldredus Rex vno & eodem die per vniuerſum regnum Danos occidit. Vide Lambert inter Regis Edouardi &c. fol. 135. & 136. By this it appeareth, when and from whom this legall ligeance had his firſt inſtitution within this Realme. Ligeantia in the caſe in queſtion, is meant and intended of the firſt kind of ligeance, that is, of the ligeance naturall, abſolute &c. due by nature and birth right. But if the plaintifes father be made a denizen, and purchaſe lands in England to him and his heires, and die ſeiſed, this land ſhall neuer diſcend to the plaintife, for that the King by his Letters Patents may make a denizen, but cannot naturalize him to all purpoſes, as an act of Parliament may doe; neither can Letters patents make any inheritable in this caſe, that by the common Law cannot inherite. And herewith agreeth 36. H. 8. tit Denizen, Br. 9.

Homage in our bookes is twofold, that is to ſay, Homagium Ligeum, and that is as much as ligeance, of which Bracton ſpeaketh lib. 2. cap. 35. fol. 79. Soli Regi debetur ſine dominio, ſeu ſeruitio: Homage is twofold.

and there is Homagium feudale, which hath his originall by tenure. In Fit. Nat. Bre. 269. there is a writ for reſpectuing of this later homage (which is due ratione feodi ſiue tenurę:) Sciatis quod reſpectuamus homagium nobis de terr̃ & ten̄tis quę tenentur de nobis in capite debit̄. But Homagiū ligeū, i. Ligeantia, is inherent and inſeparable, and cannot be reſpectued.

Where naturall ligeance is due.

¶ 3. Now are we come vnto (and almoſt paſt) the conſideration of this circumſtance, where naturall ligeance ſhould bee due: For by that which hath beene ſaid it appeareth, that ligeance, and faith and truth, which are her members and parts, are qualities of the mind and ſoule of man, and cannot bee circumſcribed within the predicament of vbi, for that were to confound predicaments, and to goe about to driue (an abſurd and impoſſible thing) the predicament of qualitie into the predicament of vbi. Non reſpondetur ad hanc queſtionem, vbi eſt? to ſay, Verus et fidelis ſubditus eſt: ſed ad hanc queſtionem, qualis eſt? rectè & aptè reſpondetur, verus & fidelis ligeus &c. eſt. But yet for the greater illuſtration of the matter, this point was handled by it ſelfe, and that ligeance of the ſubiect was of as great an extent and latitude, as the royall power and protection of the King, and è conuerſo. It appeareth by the ſtatute of 11. H. 7. cap. 1. and 2. E. 6. ca. 2. that the ſubiects of England are bound by their ligeance to go with the King, &c. in his warres, as well within the Realme &c. as without. And therefore we daily ſee, that when either Ireland or any other of his Maieſties dominions bee infeſted with inuaſion or inſurrection, the king of England ſendeth his ſubiects out of England, and his ſubiects out of Scotland alſo into Ireland, for the withſtanding or ſuppreſſing of the ſame, to the end his rebels may feele the ſwords of either nation. And ſo may his ſubiects of Gernſey, Jerſey, Iſle of Man &c. be cōmanded to make their ſwords good againſt either rebel or enemie, as occaſion ſhall be offered: whereas if naturall ligeance of the ſubiects of England ſhould be locall, that is, cōfined within ỹ realm of England or Scotland &c. thē were not they bound to goe out of the continent of the realme of England or Scotland &c. And the opinion of Thirninge in 7. H. 4. tit̄ Protect' 100. is thus to be vnderſtood, that an Engliſh ſubiect is not compellable to go out of the realme without wages, according to the ſtatutes of 1. E. 3. c. 7. 18. E. 3. c. 8. 18. H. 6. c. 19. &c. 7. H. 7. c. 1. 3 H. 8. ca. 5. &c. In añ 25. E. 1. Bigot Earle of Norff. and Suff. and Earle marſhall of England, and Bohun Earle of Heref. & high Conſtable of Engl̄d, did exhibit a petition to ỹ K. in Frēch (which I haue ſeen anciētly recorded) on

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the behalfe of the commons of England, concerning how and in what ſort they were to be imploied in his Maieſties warres out of the realme of England: and the Record ſaith, that, poſt multas & varias altercationes, it was reſolued, they ought to go but in ſuch manner and forme as after was declared by the ſaid Statutes, which ſeeme to be but declaratiue of the common law. And this doth plentifully and manifeſtly appeare in our bookes, being truly and rightly vnderſtood. In 3. H.6. tit Protection 2. one had the benefit of a protection, for that hee was ſent into the K. warres in comitiua of the protector: and it appeareth by the Record and by the Chronicles alſo, that this imployment was into France; the greateſt part thereof then beeing vnder the kings actuall obedience, ſo as the ſubiects of England were imploied into Frãce for the defence and ſafetie thereof: In which caſe it was obſerued, that ſeeing the protector, who was Prorex, went, the ſame was adiudged a voyage royall. 8. H.6. fol. 16. the Lord Talbot went with a company of Engliſhmen into Fraunce, then alſo being for the greateſt part vnder the actuall obedience of the K. who had the benefit of their protections allowed vnto thẽ. And here were obſerued the words of the writ in the Regiſter, fol. 88. where it appeareth, that mẽ were imploied in the kings warres out of the realme per præceptum noſtrum, and the vſuall words of the writ of protection be, in obſequio noſtro. 32. H.6. fol. 4. it appeareth, that Engliſhmen were preſſed into Guyan, 44. E. 3. 12. into Gaſcoigne with the duke of Lancaſter, 17. H.6. tit. Protection, into Gaſcoigne with the Earle of Huntingdon, ſteward of Guyan, 11. H. 4. 7. into Ireland, and out of this realme with the Duke of Glouceſter and the Lord Knolles: Vide 19. H.6. 35. And it appeareth in 19. Ed. 2. tit Auowry 224. 26. Aſſ. 66. 7. H. 4. 19. &c. that there was forinſecum ſeruitium forreine ſeruice, which Bracton, fol. 36. calleth regale ſeruitium: and in Fitz. N.B. 28. that the king may ſend men to ſerue him in his warres beyond the ſea. But thus much (if it be not in ſo plaine a caſe too much) ſhall ſuffice for this point for the kings power, to commaund the ſeruice of his Subiects in his warres out of the Realme. Whereupon it was concluded, That the ligeance of a naturall borne ſubiect was not locall, and confined onely to England. Now let vs ſee what the law ſaith in time of peace, concerning the kings protection and power of commaund, as well without the realme as within, that his ſubiects in all places may be protected from violence, and that iuſtice may equally be adminiſtred to all his Subiects.

Caluins case.

In the Register, fol. 25. b. Rex vniuersis & singulis admirallis, castellanis, custodibus castrorum, villarum, & aliorum fortaliciorum præpositis, vicecom̃, maioribus, custumarijs, custodibus portuum, & aliorum locorum maritimorum balliuis, ministris, & alijs fidelibus suis, tam in transmarinis quam in cismarinis partibus, ad quos &c. Salutem. Sciatis quod suscepimus in protectionem & defensionem nostram, necnon ad saluam & securam gardiam nostram, W. veniendo in regnum nostrum Angl' & potestatem nostram, tam per terram quam per mare cum vno valetto suo, ac res ac bona sua quæcunque, ad tractand' cum dilecto nr̃o & fideli L. pro redemptione prisonarij ipsius L. infra regnum & potestatem nostra prædict̃, per sex menses morando, & exinde ad propria redeundo. Et ideo &c. quod ipsum W. cum valetto, rebus & bonis suis p̃dictis veniendo in regnum & potestatem nostrã p̃d' tam p̃ terram quam per mare ibidem vt prædictum est ex causa antedicta morando, & exinde ad propria redeundo, manuteneatis, protegatis, & defendatis: non inferentes eis &c. seu grauamen. Et si quid eis forisfactum &c. reformari faciatis. In cuius &c. p̃ sex menses duratur̃. T. &c. **In which writ 3. things are to be obserued:** 1. **that the king hath** fidem & fideles in partibus transmarinis: 2. **that he hath** protectionem in partibus transmarinis: 3. **that hee hath** potestatem in partibus transmarinis.

In the Register, fo. 26. Rex vniuersis & singulis admirallis, castellanis, custodibus castror̃, villarum, & aliorum fortaliciorum præpositis, vicecom̃, maioribus, custumarijs, custodibus portuum, & aliorum locorum maritimorum balliuis, ministris, et alijs fidelibus suis, tam in transmarinis quam in cismarinis partibus ad quos &c. Salutem. Sciatis quod suscepimus in protectionem & defensionem nostram, necnon in saluum & securum conductum nostrum I. valettum P. & L. Burgensium de Lyons obsidum nostrorum, qui de licentia nostra ad partes transmarinas profecturus est, pro finantia magistrorum suorum prædictor̃ obtinenda vel deferenda, eundo ad partes prædictas, ibidem morando, & exinde in Angliam redeundo. Et ideo vobis mandamus, quod eidem I. eundo ad partes prædictas, ibidem morando, & exinde in Angliam redeundo, vt prædict' est, in persona, bonis, aut rebus suis, non inferatis, seu quantum in vobis est ab alijs inferri permittatis iniuriam, molestiam &c. aut grauamen. Sed eum potius saluum & securum conductum, cum per loca, passus, seu districtus vestros transierit, & super hoc requisiti fueritis, suis sumptibus habere faciatis. Et si quid eis forisfactum fuerit &c. reformari faciatis. In cuius &c. per tres annos duratur̃. T. &c. **And certainely this was, when Lyons in Fraunce (bordering vpon Burgundy, an auncient friend to England) was vnder the actuall obedience of king Henry the 6. For the king commaunded** fidelibus suis, **his faithfull magistrats there, that**

that if any iniurie were there done, it ſhould be by them reformed and redreſſed, and that they ſhould protect the party in his perſon and goods in peace. In the Regiſter, fol. 26. two other writs: Rex omnibus ſeneſchallis, maioribus, iuratis, paribus, prępoſitis, balliuis & fidelibus ſuis in ducatu Acquitaniæ ad quos &c. ſalutem. Quia dilecti nobis T. & A. ciues ciuitatis Burdegaliæ coram nobis in Cancellaria noſtra Angliæ & Aquitaniæ iura ſua proſequentes, & metuentes ex veriſimilibus coniecturis per quoſdam ſibi comminantes tam in corpore quam in rebus ſuis, ſibi poſſe graue damnum inferri, ſupplicauerunt nobis ſibi de protectione regia prouidere: nos volentes dictos T. & A. ab oppreſſionibus indebitis pręſeruare, ſuſcepimus ipſos T. & A. res ac iuſtas poſſeſſiones & bona ſua quæcunque in protectionem & ſaluam gardiam noſtram ſpecialem. Et vobis & cuilibet veſtrum iniungimus & mandamus, quod ipſos T. & A. familias, res ac bona ſua quæcunque a violentijs & grauaminibus indebitis defendatis, & ipſos in iuſtis poſſeſsionibus ſuis manuteneatis. Et ſi quid in præiudiciũ huius protectionis & ſaluæ gardię noſtræ attentatum inueneritis, ad ſtatũ debitum reducatis. Et ne quis ſe poſsit per ignorantiam excuſare, præſentem protectionem & ſaluã gardiam nr̃am faciatis in locis de quibus requiſiti fueritis infra diſtrict' veſtrum publicè intimari, inhibentes omnibus & ſingulis ſub pœnis grauibus, ne dictis A. & T. ſeu famulis ſuis in perſonis ſeu rebus ſuis, iniuriam, moleſtiam, damnum aliquod inferant, ſeu grauamen: & penocellas noſtras in locis & bonis ipſorum T. & A. in ſignum protectionis & ſaluæ gardiæ memoratæ, cum ſuper hoc requiſiti fueritis, apponatis. In cuius &c. Dat̃ in palatio noſtro Weſtm̃ ſub magni ſigilli teſtimonio, ſexto die Auguſti anno 44. E. 3. Rex vniuerſis & ſingulis ſeneſchallis, conſtabularijs, caſtellanis, præpoſitis, miniſtris, & omnibus balliuis & fidelibus ſuis in dominio nr̃o Aquitaniæ conſtitutis ad quos &c. Salutem. Volentes G. & R. vxorem eius fauore proſequi gratioſè: ipſos G. & R. homines & familias ſuas, ac iuſtas poſſeſsiones, & bona ſua quęcunque, ſuſcepimus in protectionem et defenſionem noſtram, necnon in ſaluam gardiam noſtram ſpecialem. Et ideo vobis & cuilibet veſtrum iniungimus et mandamus, quod ipſos G. & R. eorum homines, familias ſuas, ac iuſtas poſſeſsiones & bona ſua quæcunque manuteneatis, protegatis, & defendatis: non inferentes eis ſeu quantum in vobis eſt ab alijs inferri permittentes, iniuriam, moleſtiam, damnum, violentiam, impedimentum aliquod ſeu grauamen. Et ſi quid eis forisfact', iniuriatum, vel contra eos indebite attentatum fuerit, id eis ſine dilatione corrigi, & ad ſtatum debitum reduci faciatis, prout ad vos & quemlibet veſtrum noueritis pertinere: penocellas ſuper domibus ſuis in ſignum pręſentis ſaluæ gardiæ noſtræ (prout moris fuerit) facientes. In cuius &c. per vnum annum duraturũ. T. &c.

By al which it is manifeſt, that the protection and gouernment of the King is generall ouer all his dominions and kingdomes, as well in time of peace by iuſtice, as in time of warre by the ſword, and that all be at his commaund, and vnder his obedience. Now ſeeing power and protection draweth ligeance, it followeth, that ſeeing the kings power, commaund, and protection extendeth out of England, that ligeance cannot bee locall, or confined within the bounds thereof. He that is abiured the Realme, Qui abiurat regnum amittit regnum, ſed non regem, amittit patriam, ſed non patrem patriæ: for notwithſtanding the abiuration, hee oweth the King his ligeance, and he remaineth within the kings protection; for the King may pardon and reſtore him to his countrey againe. So as ſeeing that ligeance is a qualitie of the mind, and not confined within any place; it followeth, that the plea that doth confine the ligeance of the plaintife to the kingdome of Scotland, Infra ligeantiam regis regni ſui Scotiæ, & extra ligeantiam regis regni ſui Angliæ, whereby the defendants doe make one locall ligeance for the natural ſubiects of Englād, and another locall ligeance for the naturall ſubiects of Scotland, is vtterly inſufficient, and againſt the nature and qualitie of naturall ligeance, as often it hath beene ſaid. And Coke, chiefe Iuſtice of the Court of Common pleas, cited a ruled caſe out of Hinghams Reports, Tempore E. 1. which in his argument he ſhewed in Court written in parchment, in an auncient hand of that time. Conſtance de N. brought a writ of Ayel againſt Roger de Cobledike, and others, named in the writ, and counted that from the ſeiſin of Roger her grandfather it diſcended to Gilbert his ſonne, and from Gilbert to Conſtance, as daughter and heire. Sutton dit, Sir, el ne doit eſte reſponde, pur ceo que el eſt Francois & nient de la ligeance ne a la foy Dengliterre, et demaund̄ iudgement ſi el doit action auer: that is, ſhee is not to be anſwered, for that ſhe is a Frenchwoman, & not of the ligeāce nor of the faith of England, and demand iudgement, if ſhee this action ought to haue. Bereford (then chiefe Iuſtice of the Court of Common pleas) by the rule of the Court diſalloweth the plea, for that it was too ſhort, in that it referred ligeance and faith to England, and not to the King: and thereupon Sutton ſaith as followeth: Sir, nous voilomus auerre que el neſt my de la ligeance Dengliterre, ne a la foy le Roy, & demaund̄ iudgement, & ſi vous agardes que el doit eſte reſponde, nous dirromus aſſets: that is, Sir, we will auerre, that ſhee is not of the ligeance of England, nor of the faith of the King, & demaund iudgement, &c.

Cobledikes caſe in tēps E. 1. reported by Hingham.

which later words of the plea (nor of the faith of the King) referred faith to the King indefinitely and generally, and reſtrained not the ſame to England, and thereupon the plea was allowed for good, according to the rule of the Court: for the booke ſayth, that afterward the defendant deſired leaue to depart from her writ. The rule of that caſe of Cobledike did (as Coke chiefe Iuſtice ſaid) ouerrule this caſe of Caluin, in the very point now in queſtion; for that the plea in this caſe doth not referre faith or ligeance to the King indefinitely and generally, but limitteth and reſtraineth faith and ligeance to the kingdome: Extra ligeantiam regis regni ſui Angliæ, out of the ligeance of the King of his kingdome of England: which afterwards the Lo. Chauncelor and the chiefe Iuſtice of the Kings Bench, hauing copies of the ſaid auncient Report, affirmed in their arguments. So as this point was thus concluded, Quod ligeantia naturalis nullis clauſtris coercetur, nullis metis refrænatur, nullis finibus premitur.

To whom and how ligeãce is due.

¶ 4. & 5. By that which hath beene ſaid it appeareth, that this ligeance is due onely to the King; ſo as therein the queſtion is not now, cui, ſed quomodo debetur. It is true, that the King hath two capacities in him: one a naturall bodie, beeing diſcended of the blood royall of the Realme; and this bodie is of the creation of Almightie God, and is ſubiect to death, infirmitie, and ſuch like: the other is a politique body or capacitie, ſo called, becauſe it is framed by the policie of man (and in 21. E. 4. 39. b. is called a miſticall bodie:) and in this capacitie the King is eſteemed to be immortall, inuiſible, not ſubiect to death, infirmitie, infancie, nonage &c. Vide Pl. com. in le caſe de Seignior Barkley 238. & in le caſe del Duchie 213. Vide 6. E. 3. 291. & 26. Aſſ. pl. 54. Now ſeeing the King hath but one perſon, and ſeuerall capacities, and one politique capacitie for the Realme of England, and another for the Realme of Scotland, it is neceſſarie to bee conſidered, to which capacitie ligeance is due. And it was reſolued, that it was due to the naturall perſon of the King (which is euer accompanied with the politique capacitie, and the politique capacitie as it were appropriated to the naturall capacitie) and is not due to the politique capacitie onely, that is, to the crowne or kingdome, diſtinct from his naturall capacitie, and that for diuers reaſons. Firſt, euery ſubiect (as it hath beene affirmed by thoſe that argued againſt the plaint) is preſumed by law to be ſworne to the King, which is to his naturall perſon; and likewiſe the King is ſworne to his ſubiect (as it appeareth in Bracton, lib. 3. de actionibus, cap. 9. fol. 107.) which oath he taketh in his naturall per-

perſon: for the politique capacitie is inuiſible & immortall; nay, the politique body hath no ſoule, for it is framed by the policie of man. 2. In all inditements of Treaſon, when any doe intend or compaſſe mortem & deſtructionem dñi Regis (which muſt needs be vnderſtood of his naturall body, for his politique body is immortall, and not ſubiect to death) the inditement concludeth, cõtra ligeantiæ ſuæ debitum, ergo the ligeance is due to the naturall body. Vid' Fit. Iuſtice of Peace 53. & Plo. Com. 384. in the Earle of Leiceſters caſe. 3. It is true, that the king in genere dieth not, but, no queſtion, in indiuiduo he dieth: as for example, H. 8. E. 6. &c. & Q. Elizabeth died, otherwiſe you ſhould haue many kings at once. In 2. & 3. Ph. & Mar. Dier, 128. one Conſtable diſperſed diuers bils in the ſtreets in the night, in which was written, that king E. 6. was aliue, and in Fraunce &c. and in Colman ſtreet in London he pointed to a young man, and ſaid that he was king Edward the ſixt. And this beeing ſpoken de indiuiduo (and accompanied with other circumſtances) was reſolued to be high Treaſon; for the which Conſtable was attainted and executed. 4. A bodie politique (beeing inuiſible) can as a bodie politique neither make nor take homage: Vide 33. H. 8. tit Fealtie, Brooke. 5. In fide in faith or ligeance nothing ought to be fained, but ought to be ex fide non ficta. 6. The king holdeth the kingdome of England by birth-right inherent, by diſcent from the blood royall, whereupon ſucceſſion doth attend: and therefore it is vſually ſaid, to the king, his heirs and ſucceſſors, wherein heirs is firſt named, and ſucceſſors is attendant vpon heires. And yet in our ancient bookes, ſucceſſion and ſucceſſor are taken for hereditance and heires. Bracton lib. 2. de acquirendo rerum dominio, cap. 29. Et ſciendum eſt, quod hæreditas eſt ſucceſſio in vniuerſum ius quod defunctus anteceſſor habuit, ex quacunque cauſa acquiſitionis vel ſucceſſionis, & alibi affinitatis iure nulla ſucceſſio permittitur. But the title is by diſcent; by Queene Elizabeths death the crown and kingdome of England diſcended to his Maieſtie, and hee was fully and abſolutely thereby king, without any eſſentiall ceremonie or act to be done ex poſt facto: for cozonation is but a royall ornament and ſolemnization of the royall diſcent, but no part of the title. In the firſt yeare of his Maieſties raigne, before his Maieſties cozonation, Watſon and Clarke, ſeminarie prieſts and others were of opinion, that his Maieſtie was no complete and abſolute king before his cozonation, but that cozonation did adde a confirmation and perfection to the diſcent: and therfore (obſerue their damnable and damned conſequent) that they by

ſtrength

ſtrength and power might before his coronation take him and his royall iſſue into their poſſeſſion, keepe him priſoner in the Tower, remoue ſuch counſellors and great officers as pleaſed them, and conſtitute others in their places &c. and that theſe and others of like nature could not be Treaſon againſt his maieſtie, before he were a crowned King. But it was clearely reſolued by all the Iudges of England, that preſently by the diſcent his Maieſty was completely and abſolutely King, without any eſſentiall ceremonie or act to be done ex poſt facto, and that coronation was but a royall ornament, and outward ſolemnization of the diſcent. And this appeareth euidently by infinite Preſidents and booke caſes, as (taking one example in a caſe ſo cleere for all) King Henry the ſixt was not crowned vntill the eight yeare of his raigne, and yet diuers men before his coronation were attainted of Treaſon, or Felony, &c. and he was as abſolute and complete a King, both for matters of iudicature, as for graunts &c. before his coronation, as he was after, as it appeareth in the Reports of the 1.2.3.4.5.6. and 7. yeares of the ſame King. And the like might be produced for many other Kings of this Realme, which for breuitie in a caſe ſo cleare I omit. By which it manifeſtly appeareth, that by the Lawes of England there can be no interregnum within the ſame. If the King be ſeiſed of land by a defeaſible title, and dieth ſeiſed, this diſcent ſhall tolle the entry of him that right hath, as it appeareth by 9.E.4. 51. But if the next King had it by ſucceſſion, that ſhould take away no entry, as it appeareth by Litt. fol. 97. If a diſſeiſor of an infant conuey the land to the King, who dieth ſeiſed, this diſcent taketh away the entry of the infant, as it is ſaid in 34. H.6. fol. 34. 45. lib. Aſſ. pl. 6. Plow. Com. 234. where the caſe was, that King H.3. gaue a manor to his brother the Earle of Cornewall in taile (at what time the ſame was a fee ſimple conditionall) King H.3. died, the Earle before the ſtatute of Donis condicional' (hauing no iſſue) by deed exchanged the manor with warrãty for other lands in fee, and died without iſſue, and the warranty and aſſets diſcended vpon his nephew King Edward the firſt: and it was adiudged, that this warranty and aſſets, which diſcended vpon the naturall perſon of the King, barred him of the poſſibilitie of reuerter. In the raigne of Ed. 2. the Spencers the father and the ſonne, to couer the Treaſon hatched in their hearts, inuented this damnable and damned opinion, That homage and oath of ligeance was more by reaſon of the Kings Crowne (that is, of his politique capacitie) then by reaſon of the perſon of the

king,

king, vpon which opinion they inferred execrable and deteſtable conſequents: 1. If the king doe not demeane himſelfe by reaſon in the right of his Crowne, his lieges are bound by oath to remoue the king: 2. Seeing that the king could not be reformed by ſuit of Law, that ought to be done per aſpertee: 3. That his lieges be bound to gouerne in aid of him, and in default of him. All which were condemned by two Parliaments, one in the raigne of E. 2. called exilium Hugonis le Spencer, and the other in Anno 1. E. 3. cap. 1. Bracton lib. 2. de acquirendo rerum dominio, cap. 24. fol. 55. ſayth thus, Eſt enim corona Regis facere iuſticiam & iudicium, & tenere pacem, & ſine quibus corona conſiſtere non poteſt nec tenere; huiuſmodi autem iura ſiue iuriſdictiones ad perſonas vel tenementa transferri non potuerunt, nec a priuata perſona poſſideri, nec vſus nec executio iuris, niſi hoc datum fuit ei deſuper, ſicut iuriſdictio delegata delegari non poterit quin ordinaria remaneat cum ipſo Rege. Et libro 3. de actionibus, ca. 9. fol. 107. Seperare autem debet Rex, cum ſit dei vicarius in terra, ius ab iniuria, æquum ab iniquo, vt omnes ſibi ſubiecti honeſtè viuant, & quod nullus alium lædat, & quod vnicuique quod ſuum fuerit recta contributione reddatur. In reſpect whereof one ſayth, That Corona eſt quaſi cor ornans, cuius ornamenta ſunt miſericordia & iuſticia. And therefore a kings Crowne is an Hieroglyphicke of the Lawes, where iuſtice &c. is adminiſtred: for ſo ſaith P. Val. lib. 41. pag. 400. Coronam dicimus legis iudicium eſſe, propterea quod certis eſt vinculis complicata, quibus vita noſtra veluti religata coercetur. Therefore if you take that which is ſignified by the Crowne, that is, to doe iuſtice and iudgement, to maintaine the peace of the land &c. to ſeperate right from wrong, and the good from the ill; that is to be vnderſtood of that capacitie of the king, that in rei veritate hath capacitie, and is adorned and indued with indowments, as well of the ſoule as of the body, and thereby able to doe iuſtice and iudgement, according to right and equitie, and to maintaine the peace &c. and to find out and diſcerne the truth, and not of the inuiſible and immortall capacitie that hath no ſuch indowments, for of it ſelfe it hath neither ſoule nor body. And where diuers bookes and acts of parliament ſpeake of the ligeance of England, as 31. E. 3. tit Coſinage 5. 42. E. 3. 2. 13. E. 3. tit Bre 677. 25. E. 3. ſtatut 2. de natis vltra mare; All theſe and other ſpeaking briefely in a vulgar manner (for loquendum vt vulgus) and not pleading (for ſentiendum vt docti) are to bee vnderſtood of the ligeance due by the people of England to the king: For no man will affirme, that England it ſelfe, taking it for the Continent thereof, doth owe

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any ligeance or faith, or that any faith or ligeance ſhould bee due to it: but it manifeſtly appeareth, that the ligeance or faith of the Subiect is proprium quarto modo to the King, omni, ſoli, & ſemper. And oftentimes in the Reports of our booke caſes, and in Acts of Parliament alſo, the Crowne or Kingdome is taken for the King himſelfe, as in Fitz. Natur.Bre.fol.5. tenure in capite is a tenure of the crowne, and is a Seigniorie in groſſe, that is, of the perſon of the King: and ſo is 30. Hen. 8. Dyer fol.44. 45. a tenure in chiefe as of the crowne is meerely a tenure of the perſon of the King, and therewith agreeth 28. Henr. 8. tit Tenure, Br.65. The Statute of 4. Hen.5. cap. vltimo gaue Priors aliens, which were conuentuall to the King and his heires, by which gift ſaith 34. Hen. 6. 34. the ſame were annexed to the crowne. And in the ſaid Act of 25. E.3. whereas it is ſaid in the beginning, within the ligeance of England, it is twice afterward ſaid in the ſame Act within the ligeance of the King, and yet all one ligeance due to the King. So in 42. Edw.3.fol.2. where it is firſt ſaid, the ligeance of England, it is afterward in the ſame caſe called, the ligeance of the King; wherein though they vſed ſeuerall manner and phraſes of ſpeech, yet they intended one and the ſame ligeance. So in our vſuall Commiſſion of Aſſiſe, of Gaole deliuerie, of Oyer and Terminer, of the Peace &c. power is giuen to execute iuſtice ſecundum legem & conſuetudinem regni noſtri Angliæ: and yet Little. lib.2. in his chapter of Villenage, fol.43. in diſabling of a man that is attainted in a Premunire, ſaith, That the ſame is the Kings Law; and ſo doth the Regiſter in the writ of ad iura regia ſtyle the ſame.

The reaſons and cauſes wherefore by the policie of the Law the King is a body politique, are three, viz. 1. cauſa maieſtatis, 2. cauſa neceſſitatis, and 3. cauſa vtilitatis. First, cauſa maieſtatis, the King cannot giue or take but by matter of Record for the dignitie of his perſon. Secondly, cauſa neceſſitatis, as to auoyd the attainder of him that hath right to the Crowne, as it appeareth in 1.Hen.7.4. leaſt in the interim there ſhould be an Interregnum, which the Law will not ſuffer. Alſo by force of this politique capacitie, though the King be within age, yet may hee make Leaſes and other Graunts, and the ſame ſhall bind him; otherwiſe his reuenue ſhould decay, and the King ſhould not bee able to reward ſeruice &c. Laſtly, cauſa vtilitatis, as when landes and poſſeſſions diſcend from his collaterall anceſtors, beeing Subiects, as from the Earle of

The reaſons wherefore the King by iudgement of law hath a politique capacitie.

of March &c. to the king, now is the king ſeiſed of the ſame in iure coronæ in his politique capacitie; for which cauſe the ſame ſhall goe with the crowne: and therefore, albeit Queene Elizabeth was of the halfe blood to Queene Marie, yet ſhe in her body politique enioyed all thoſe fee ſimple lands, as by the Law ſhee ought, and no collaterall couſin of the whole blood to Queene Marie ought to haue the ſame. And theſe are the cauſes wherfore by the policie of the law the king is made a body politique: So as for theſe ſpecial purpoſes the law makes him a body politique, immortall, and inuiſible, whereunto our ligeance cannot appertaine. But to conclude this point, our ligeance is due to our naturall liege Soueraigne, diſcended of the blood royall of the kings of this Realme. And thus much of the firſt generall part de Ligeantia.

The 2. generall part. *De Legibus*

Now followeth the ſecond part, de Legibus, wherein theſe parts were conſidered: First, That the ligeance or faith of the Subiect is due vnto the king by the law of Nature: Secondly, That the Law of Nature is part of the Law of England: Thirdly, That the Law of Nature was before any iudiciall or municipall Law: Fourthly, That the Law of Nature is immutable.

The Law of Nature.

The Law of Nature is that which God at the time of creation of the nature of man infuſed into his heart, for his preſeruation and direction: and this is Lex æterna, the morall Law, called alſo the Law of Nature: and by this Law, written with the finger of God in the heart of man, were the people of God a long time gouerned, before that Law was written by Moyſes, who was the firſt Reporter or Writer of the Law in the world. The Apoſtle in the ſecond chapter to the Romans ſaith, Cum enim gentes quæ legem non habẽt naturaliter ea quæ legis ſunt faciunt. And this is within that commandement of the morall law, honora patrem; which doubtleſſe doth extend to him that is pater patriæ. And the Apoſtle ſaith, Omnis anima poteſtatibus ſublimioribus ſubdita ſit. And theſe be the words of the great Diuine, Hoc Deus in ſacris Scripturis iubet, hoc lex naturæ dictat, vt quilibet ſubditus obediat ſuperiori. And Ariſtotle, Natures Secretarie, lib. 5. Æthicorum ſaith, That ius naturale eſt, quod apud omnes homines eandem habet potentiam. And herewith doe agree Bracton lib. 1. cap. 5. and Forteſcue, cap. 8. 12. 13. & 16. Doctor & Student, cap. 2. & 4. And the reaſon hereof is, for that God and Nature is one

to

to all, and therefore the law of God and Nature is one to all. By this law of nature is the faith, ligeance, and obedience of the ſubiect due to his ſoueraigne or ſuperiour. And Ariſtotle 1. Politicorum proueth, that to commaund and to obey is of nature, and that magiſtracie is of nature: for whatſoeuer is neceſſarie, and profitable for the preſeruation of the ſocietie of man, is due by the law of nature: but magiſtracie and gouernement are neceſſarie and profitable for the preſeruation of the ſocietie of man; therefore magiſtracie and gouernment are of nature. And herewith accordeth Tully lib.3. de Legibus, Sine imperio nec domus vlla, nec ciuitas, nec gens, nec hominum vniuerſum genus ſtare, nec ipſe denique mundus poteſt. This law of nature, which indeed is the eternall law of the Creator, infuſed into the heart of the creature at the time of his creation, was two thouſand yeres before any law written, and before any iudiciall or municipall lawes. And certaine it is, that before iudiciall or municipall lawes were made, Kings did decide cauſes according to naturall equitie, and were not tied to any rule or formalitie of law, but did dare iura. And this appeareth by Forteſcue cap.12.& 13. and by Virgil that Philoſophicall Poet 7.Ænead:

Hoc Priami geſtamen erat, cum iura vocatis
More daret populis.

And 5.Ænead:

———Gaudet regno Troianus Aceſtes,
Indicitq; forum & patribus dat iura vocatis.

And Pomponius lib.2.cap. de origine iuris, affirmeth, that in Tarquinius Superbus time, there was no Ciuile law written, and that Papirius reduced certaine obſeruations into writing, which was called Ius ciuile Papirianum. Now the reaſon wherefore lawes were made and publiſhed, appeareth in Forteſcue cap. 13. and in Tully lib.2. officiorum: at cum ius æquabile ab vno viro homines non conſequerentur, inuentæ ſunt leges. Now it appeareth by demonſtratiue reaſon, that ligeance, faith, and obedience of the ſubiect to the Soueraigne, was before any municipall or iudiciall lawes: 1. For that gouernement and ſubiection were long before any municipall or iudicall lawes: 2. For that it had bin in vaine to haue preſcribed lawes to any, but to ſuch as ought obedience, faith, and ligeance before, in reſpect whereof they were bound to obey and obſerue them: Fruſtra enim

feruntur leges nisi subditis & obedientibus. Seeing then that faith, obedience, and ligeance, are due by the law of nature, it followeth that the same cannot be changed or taken away: for albeit iudiciall or municipall lawes haue inflicted and imposed in seuerall places, or at seuerall times, diuers and seueral punishments and penalties for breach or not obseruance of the law of nature (for that law onely consisted in commaunding or prohibiting, without any certaine punishment or penaltie) yet the very law of nature it self, neuer was nor could be altered or changed. And therfore it is certainely true, that Iura naturalia sunt immutabilia. And herewith agreeth Bracton lib. 1. cap. 5. and Doctour and Student cap. 5. & 6. And this appeareth plainely and plentifully in our Bookes.

If a man hath a ward by reason of a Seigniorie, and is outlawed, he forfeiteth the wardship to the king: but if a man hath the wardship of his owne sonne or daughter, which is his heire apparant, and is outlawed, hee doth not forfeit this wardship, for nature hath annexed it to the person of the father, as it appeareth in 33. H. 6. 55. & bonus rex nihil a bono patre differt, & patria dicitur a patre, quia habet communem patrem, qui est pater patriæ. In the same manner, maris & fœminæ coniunctio est de iure naturæ, as Bracton in the same booke and chapter, and S. Germin in his booke of the Doctor and Student, cap. 5. do hold. Now if hee that is attainted of Treason or Felonie, bee slaine by one that hath no authoritie, or executed by him that hath authoritie, but pursueth not his warrant, in this case his eldest sonne can haue no appeale, for he must bring his appeale as heire, which being ex prouisione hominis he loseth it by the attainder of his father: but his wife (if any he haue) shall haue an appeale, because shee is to haue her appeal as wife, which she remaineth notwithstanding the attainder, because maris & fœminę coniunctio is de iure naturę, and therefore (it being to be intended of true and right matrimonie) is indissoluble: and this is proued by the booke in 33. H. 6. fol. 57. So if there be mother & daughter, & the daughter is attainted of felonie, now cannot she be heire to her mother for the cause aforesaid, yet after her attainder if she killeth her mother, this is parricide and petit treason; for yet she remaineth her daughter, for that is of nature: and herewith agreeth 21. E. 3. 17. b. If a man be attainted of Felonie or Treason, he hath lost the kings legall protection, for he is thereby vtterly disabled to sue any action reall or personall (which is a greater disabilitie than an alien in league hath) and yet such a person so attainted hath not lost that pro-

protection which by the law of nature is giuen to the king, for that is indelebilis & immutabilis; and therefore the king may protect and pardon him, and if any man kill him without warrant, he ſhall bee puniſhed by law as a manſlayer; and thereunto accordeth 4.Ed.4. and 35.H.6.57. 2.Aſſ.pl.3. By the ſtatute of 25. Ed.3.cap.22. a man attainted in a Præmunire, is by expreſſe words out of the kings protection generally: & yet this extendeth onely to legall protection, as it appeareth by Litl.fol.43. for the Parliament could not take away that protection which the law of nature giueth vnto him: and therfore notwithſtanding that ſtatute, the king may protect and pardon him. And though by that ſtatute it was further enacted, That it ſhould be done with him as with an enemie, by which words any man might haue ſlaine ſuch a perſon (as it is holden in 24.H.8.tit Coron Br.197.) vntil the ſtatute made an 5.El.cap.1. yet the king might protect and pardon him. A man outlawed is out of the benefit of the municipal law: for ſo ſaith F.N.B. 161. Vtlagatus eſt quaſi extra legem poſitus: and Bracton lib.3.tract.2.cap.11. ſaith, that caput gerit lupinum; yet is he not out either of his natural ligeance, or of the kings natural protection, for neither of them is tyed to municipal lawes, but is due by the law of nature, which (as it hath bin ſaid) was long before any iudiciall or municipall lawes. And therefore if a man were outlawed for felonie, yet was he within the kings naturall protection, for no man but the Sherif could execute him, as it is adiudged in 2.lib.Aſſ.pl.3. Euerie ſubiect is by his naturall ligeance bound to obey and ſerue his Soueraigne &c. It is enacted by the Parliament of 23.H.6. that no man ſhould ſerue the king as Sherife of any Countie aboue one yeare, and that, notwithſtanding any clauſe of non obſtante to the cõtrarie, that is to ſay, notwithſtanding that the king ſhould expreſly diſpenſe with the ſaid ſtatute: howbeit it is agreed in 2.H.7. that againſt the expreſſe puruiew of that act, the king may by a ſpeciall non obſtante diſpence with that act; for that the act could not bar the king of the ſeruice of his ſubiect, which the law of nature did giue vnto him. By theſe and many other caſes that might be cited out of our bookes, it appeareth, how plentifull the authorities of our lawes be in this matter. Wherefore to conclude this point (and to exclude all that hath beene or could bee obiected againſt it) if the obedience and ligeance of the ſubiect to his Soueraigne, bee due by the law of nature, if that law bee parcell of the lawes as well of England, as of all other nations, and is immutable, and that Poſtnati and wee of England are vnited by birthright

in obedience and ligeance (which is the true cause of naturall subiection) by the law of nature. It followeth that Caluin the plaintife being borne vnder one ligeance to one King, cannot bee an alien borne, And there is great reason, that the law of nature should direct this case, wherein fiue naturall operations are remarkable: First, the King hath the crowne of England by birthright, being naturally procreated of the bloud royall of this Realme: Secondly, Caluin the plaintife naturalized by procreation and birthright, since the discent of the crowne of England: Thirdly, ligeance and obedience of the subiect to the Soueraigne, due by the law of nature: Fourthly, protection and gouernment due by the law of nature: Fifthly, this case, in the opinions of diuers, was more doubtfull in the beginning, but the further it proceeded, the cleerer and stronger it grew; and therefore the doubt grew from some violent passion, and not from any reason grounded vpon the law of nature, quia quanto magis violentus motus (qui fit contra naturam) appropinquat ad suum finem, tanto debiliores & tardiores sunt eius motus; sed naturalis motus, quanto magis appropinquat ad suum finem, tanto fortiores & velociores sunt eius motus. Hereby it appeareth how weake the obiection grounded vpon the rule of Quando duo iura concurrunt in vna persona &c. is: For that rule holdeth not in personall things, that is, when two persons are necessarily & inevitably required by law (as in the case of an alien borne there is:) and therefore no man will say, that now the king of England can make warre or league with the king of Scotland, & sic de cæteris: And so in case of an alien borne, you must of necessitie haue two seuerall ligeances to two seuerall persons. And to conclude this point concerning lawes, Non aduersatur diuersitas regnorum sed regnantium, non patriarum sed patrum patriarum, non coronarum sed coronatorum, non legum municipalium sed regum maiestatum. And therefore thus were directly and cleerely answered as well the obiections drawne from the seueraltie of the kingdomes, seeing there is but one head of both, & the Postnati and vs ioyned in ligeance to that one head, which is copula & tanquã oculus of this case, as also the distinction of the lawes, seeing that ligeance of the subiects of both kingdomes, is due to their Soueraigne by one law, and that is the law of nature.

The 3. generall part, cõcerning both kingdomes.

For the third, It is first to bee vnderstood, that as the law hath wrought foure vnions, so the law doth still make foure seperations. The first vnion is of both kingdomes vnder one naturall liege soueraigne King, and so acknowledged by the act of

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Parliament of recognition. The ſecond is an vnion of ligeance and obedience of the ſubiects of both kingdomes, due by the law of nature to their Soueraigne: And this vnion doth ſuffice to rule and ouerrule the caſe in queſtion; and this in ſubſtance is but a vniting of the hearts of the ſubiects of both kingdoms one to another, vnder one head and ſoueraigne. The 3. vnion is an vnion of protection of both kingdomes, equally belonging to the ſubiects of either of them: And therefore the two firſt argumēts or obiections drawne from two ſuppoſed ſeuerall ligeances, were fallacious, for they did diſiungere coniungenda. The fourth vnion and coniunction is, of the three Lyons of England, and that one of Scotland, vnited & quartered in one eſcucheon.

Concerning the ſeperations yet remaining: Firſt, England and Scotland remaine ſeuerall and diſtinct kingdomes: 2. They are gouerned by ſeuerall iudiciall or municipall lawes: 3. They haue ſeuerall diſtinct and ſeperat Parliaments: 4. Each kingdome hath ſeuerall Nobilities: For albeit a Poſtnatus in Scotland, or any of his poſteritie, be the heire of a Noble man of Scotland, and by his birth is legitimated in England, yet he is none of the Peeres or Nobilitie of England; for his naturall ligeance and obedience, due by the law of nature, maketh him a ſubiect, and no alien within England: but that ſubiection maketh him not noble within England, for that Nobilitie had his originall by the kings creation, and not of nature. And this is manifeſted by expreſſe authorities, grounded vpon excellent reaſons in our bookes. If a Baron, Vicount, Earle, Marques, or Duke of England, bring any action real or perſonall, and the defendant pleadeth in abatement of the writ, that hee is no Baron, Vicont, Earle, &c. and thereupon the demaundant or plaintife taketh iſſue; this iſſue ſhall not bee tryed by Jurie, but by the record of Parliament, whether hee or his auncеſtor, whoſe heire hee is, were called to ſerue there as a Peere, and one of the Nobilitie of the Realme. And ſo are our bookes adiudged in 22. Aſſ. 24. 48. Ed. 3. 30. 35. H. 6. 40. 20. Eliz. Dyer 360. Vide in the 6. part of my Reports, in the Counteſſe of Rutlands caſe. So as the man, that is not de iure a Peere, or one of the Nobilitie, to ſerue in the vpper houſe of the Parliament of England, is not in the legall proceedings of law accounted Noble within England. And therefore if a Countee of Fraunce, or Spaine, or any other forreine kingdome, ſhould come into England, hee ſhould not here ſue, or bee ſued, by the name of Countee, &c. for that hee is none of the Nobles that are members of the

vpper houſe of the Parliament of England: and herewith agree the booke caſes of 20.Ed.4.6.and 11.Ed.3.tit Bre 473. Like law it is,and for the ſame reaſon,of an Earle or Baron of Ireland,hee is not any Peere,or of the Nobilitie of this Realme: and herewith agreeth the booke in 8.R.2.tit Proces pl.vltim.where in an action of Debt proces of Outlawrie was awarded againſt the Earle of Ormond in Ireland,which ought not to haue been,if he had been noble here. Vide Dier 20.Eliz.360.

But yet there is a diuerſitie in our books worthy of obſeruation,for the higheſt and loweſt dignities are vniuerſall; for if a king of a forreine nation come into England, by the leaue of the king of this Realme(as it ought to bee) in this caſe hee ſhall ſue and bee ſued by the name of a king: and herewith agreeth 11.E. 3.tit Briefe 473. where the caſe was, that Alice, which was the wife of R.de O.brought a writ of Dower againſt John Earle of Richmond, and the writ was,Præcip Iohañ Comiti Richmõd cuſtodi terræ & hæredis of William the ſonne of R.de O. the tenãt pleaded,That he is Duke of Brittain,not named Duke,iudgement of the writ: But it is ruled, that the writ was good, for that the dukedome of Brittaine was not within the Realme of England.But there it is ſaid,that if a man bring a writ againſt Edward Baliol,and name him not king of Scotland, the writ ſhall abate for the cauſe aforeſaid. And hereof there is a notable preſident in Fleta lib.2.cap.14. where, treating of the iuriſdiction of the Kings Court of Marſhalſey,it is ſaid, Et hæc omnia ex officio ſuo licitè facere poterit (s.Seneſchallus aulæ hoſpicij Regis) non obſtante alicuius libertate,etiam in alieno regno dum tamen reus in hoſpitio Regis poterit inueniri, ſecundum quod contigit Pariſ. anno 14. Ed.1.de Engelramo de Nogent capto in hospitio Regis Angliæ (ipſo rege tunc apud Pariſiam exiſtente) cum diſcis argenti furatis recentèr ſuper facto,rege Franciæ tunc præſente,& vnde licet curia regis Francię de prædicto latrone per caſtellanum Pariſ.petita fuerit, habitis hic & inde tractatibus,in conſilio Regis Franciæ tandem conſideratum fuit, qđ Rex Angliæ illa regia prærogatiua & hoſpitij ſui priuilegio vteretur & gauderet,qui, coram Roberto Fitz-Iohn milite tunc hoſpitij Regis Anlię Seneſchallo de latrocinio conuictus, per conſiderationem eius Curiæ fuit ſuſpenſus in patibulo Scī Germani de Pratis. Which proueth, that though the king be in a forreine kingdome,yet he is iudged in law a king there. The other part of the ſaid diuerſitie,is proued by the booke caſe in 20.Ed.4. fol.6. where, in a writ of Debt brought by Sir John Duglas knight, againſt Eliz.ab. Wolford,the defendant demaunded iudgement of the writ, for that the

the plaintife was an Earle of Scotland, but not of England, and that our Soueraigne Lord the king had graunted vnto him ſafe conduct, not named by his name of dignitie, iudgement of the writ &c. And there Iuſtice Littleton giueth the rule: the plaintife (ſaith he) is an Earle in Scotland, but not in England; and if our Soueraigne Lord the king graunt to a Duke of Fraunce a ſafe couduct to marchandiſe, and to enter into his Realme, if the Duke commeth and bringeth marchandiſe into this land, and is to ſue an action here, he ought not to name himſelfe Duke, for he is not a Duke in this land, but only in France. And theſe be the verie words of that booke caſe: out of which I collect three things. Firſt, that the plaintife was named by the name of a knight, whereſoeuer he receiued that degree of dignitie, Vide 7.H.6.14.accord. 2. That an Earle of another kingdom or nation is no Earle (to be ſo named in legal proceedings) within this Realme: and herewith agreeth the booke of 11.Ed.3. the Earle of Richmonds caſe before recited. 3. That albeit the king by his letters Patents of ſafe conduct doe name him Duke, yet that appellation maketh him no Duke, to ſue or be ſued by that name within England: So as the law in theſe points (apparant in our books) being obſerued, and rightly vnderſtood, it appeareth how cauſleſſe their feare was, that the adiudging of the plaintife to be no alien, ſhould make a confuſion of the Nobilities of either kingdome.

Now are we in order come to the fourth noune (which is the generall part) Alienigena; wherein 6. things did fall into conſideration. ¶ 1. Who was Alienigena, an alien borne by the lawes of England. ¶ 2. How many kind of aliens borne there were. ¶ 3. What incidents belonged to an alien borne. ¶ 4. The reaſon why an alien is not capable of inheritance or freehold within England. ¶ 5. Examples, reſolutions, and iudgements. reported in our bookes in all ſucceſſion of ages, proouing the plaintife to be no alien. ¶ 6. Demonſtratiue concluſions vpon the premiſſes, approuing the ſame. 4 The 4. generall part. *De Alienigena.*

1 An Alien is a ſubiect that is borne out of the ligeance of the king, and vnder the ligeance of another, and can haue no real or perſonall action for or concerning land; but in euerie ſuch action the tenant or defendant may plead, that he was borne in ſuch a countrey, which is not within the ligeance of the king, and demaund iudgement if he ſhall be anſwered. And this is in effect the deſcription which Littleton himſelfe maketh, lib.2. cap. Villeñ fol.43. Alienigena eſt alienę gentis ſeu alienæ ligeantię, qui etiam dicitur Who is an Alien.

tur peregrinus, alienus, exoticus, extraneus &c. Extraneus eſt ſubditus, qui extra terram, i. poteſtatem regis natus eſt. And the vſuall & right pleading of an alien borne, doth liuely and truly deſcribe and expreſſe what he is. And therein two things are to bee obſerued: 1. That the moſt vſuall and beſt pleading in this caſe is, both excluſiue and incluſiue, viz. extra ligeantiam domini Regis &c. & infra ligeantiam alterius Regis, as it appeareth in 9. Ed. 4. 7. Booke of Entries fol. 244. &c. which cannot poſſibly bee pleaded in this caſe, for two cauſes: First, for that one king is Soueraigne of both kingdomes: 2. One ligeance is due by both to one Soueraigne, and in caſe of an alien, there muſt of neceſſitie be ſeuerall kings, and ſeuerall ligeances. Secondly, no pleading was euer extra regnum, or extra legem, which are circumſcribed to place, but extra ligeantiam, which (as it hath beene ſaid) is not locall or tied to any place.

It appeareth by Bracton lib. 3. tract. 2. cap. 15. fol. 134. that Canutus the Daniſh king, hauing ſetled himſelfe in this kingdome in peace, kept notwithſtanding (for the better continuance thereof) great armies within this Realme. The Peeres and Nobles of England diſtaſting this gouernement, by armes and armies (Odimus accipitrem quia ſemper viuit in armis) wiſely and politikely perſuaded the king, that they would prouide for the ſafety of him and his people, and yet his armies carrying with them many inconueniences, ſhould bee withdrawne: And therefore offered, that they would conſent to a lawe, that whoſoeuer ſhould kill an alien, and be apprehended, and could not acquit himſelfe, hee ſhould bee ſubiect to iuſtice: but if the manſlayer fled, and could not bee taken, then the towne where the man was ſlaine ſhould forfeit 66. markes vnto the King: and if the towne were not able to pay it, then the Hundred ſhould forfeit and pay the ſame vnto the Kings treaſure: whereunto the King aſſented. This law was penned: quicunque occiderit Francigenam &c. not excluding other aliens, but putting Francigena a Frenchman for an example, that others muſt be like vnto him, in owing ſeuerall ligeance to a ſeuerall Soueraigne, that is, to be extra ligeantiam Regis Angliæ, and infra ligeantiam alterius Regis. And it appeareth before out of Bracton and Fleta, that both of them vſe the ſame examples (in deſcribing of an alien) ad fidem Regis Franciæ. And it was holden, that except it could bee prooued, that the partie ſlaine was an Engliſh man, that hee ſhould bee taken for an alien; and this was called Engleſherie, Engleſheria, that is, a proofe that the partie ſlaine was an Engliſh man. (Hereupon

Canutus

Canutus preſently withdrew his armies, & within a while after loſt his crowne, and the ſame was reſtored to his right owner.) The ſaid law of Engleſherie continued vntill 14. Ed. 3. cap. 4. and then the ſame was by act of Parliament ouſted and aboliſhed. So amongſt the lawes of William the firſt, publiſhed by Maſter Lambert fol. 125. Omnis Francigena (there put for example as before is ſaid, to expreſſe what maner of perſon alienigena ſhould be) qui tempore Edwardi propinqui noſtri fuit particeps legum & conſuetudinum Anglorum (that is made denizen) quod dicunt ad ſcot & lot perſoluat ſecundum legem Anglorum.

How many kind of aliens there be.

Euerie man is either Alienigena, an alien borne, or ſubditus, a ſubiect borne. Euerie alien is either a friend that is in league, &c. or an enemie that is in open warre, &c. Euerie alien enemie is either pro tempore, temporarie for a time, or perpetuus, perpetuall, or ſpecialiter permiſſus, permitted eſpecially. Euerie ſubiect is either natus, borne, or datus, giuen or made: And of theſe briefely in their order. An alien friend, as at this time a German, a Frenchman, a Spaniard, &c. (all the kings and princes in Chriſtendome being now in league with our Soueraigne, but a Scot beeing a ſubiect, cannot bee ſaid to bee a friend, nor Scotland to bee ſolum amici) may by the common law haue, acquire, and get within this Realme, by gift, trade, or other lawfull meanes, any treaſure or goods perſonall whatſoeuer, as well as any Engliſhman, and may maintaine any action for the ſame: But lands within this Realme, or houſes (but for their neceſſarie habitation onely) alien friends cannot acquire or get, nor maintaine any action reall or perſonall for any land or houſe, vnleſſe the houſe be for their neceſſarie habitation. For if they ſhould be diſabled to acquire and maintaine theſe things, it were in effect to denie vnto them trade and traffique, which is the life of euery iſland. But if this alien become an enemie (as all alien friends may) then is hee vtterly diſabled to maintaine any action, or get any thing within this Realme. And this is to bee vnderſtood of a temporarie alien, that beeing an enemie, may bee a friend, or beeing a friend may bee an enemie. But a perpetuall enemie (though there be no warres by fire and ſword betweene them) cannot maintaine any action, or get any thing within this Realme. All Infidels are in law perpetui inimici, perpetuall enemies (for the law preſumes not that they will bee conuerted, that beeing remota potentia, a remote poſſibilitie) for betweene them, as with the diuels, whoſe ſubiects they bee, and the Chriſtian, there is perpetuall hoſtili-

hostilitie, and can be no peace: for as the Apostle saith 2.Cor.15. quæ autem conuentio Christi ad Belial, aut quæ pars fideli cum infideli, and the law saith, Iudæo Christianum nullum seruiat mancipium, nefas enim est quem Christus redemit blasphemum Christi in seruitutis vinculis detinere. Register 282. Infideles sunt Christi & Christianorum inimici. And herewith agreeth the booke in 12.H.8.fol.4. where it is holden, that a Pagan cannot haue or maintaine any action at all.

By what lawes kingdomes gotte by conquest &c. shalbe gouerned.

And vpon this ground there is a diuersitie betweene a conquest of a kingdome of a Christian king, and the conquest of a kingdome of an Infidel: for if a king come to a Christian kingdome by conquest, seeing that he hath vitæ & necis potestatem, hee may at his pleasure alter and change the lawes of that kingdome, but vntill hee doth make an alteration of those lawes, the antient lawes of that kingdome remaine. But if a Christian king should conquer a kingdome of an Infidel, and bring them vnder his subiection, there ipso facto the lawes of the Infidel are abrogated, for that they be not onely against Christianitie, but against the law of God and of nature, contained in the Decalogue. And in that case, vntill certaine lawes bee established amongst them, the king by himselfe and such Iudges as he shall appoint, shall iudge them and their causes, according to natural equitie, in such sort as kings in auncient time did within their kingdomes, before any certaine municipall lawes were giuen, as before hath beene said. But if a king hath a kingdome by title of discent, there, seeing by the lawes of that kingdome hee doth inherit the kingdome, he cannot change those laws of himselfe, without consent of Parliament. Also if a king hath a Christian kingdome by conquest, as king Henrie the second had Ireland, after king John had giuen vnto them, being vnder his obedience and subiection, the lawes of England for the gouernement of that countrey, no succeeding king could alter the same without Parliament. And in this case whiles the Realme of

Ireland.

England, and that of Ireland were gouerned by seuerall lawes, any that was borne in Ireland, was no alien to the realm of England, In which president of Ireland 3. things are to bee obserued: 1. That then there had bin two discents, one from H. the 2. to king Rich. the 1. and from Rich. to king John, before the alteration of the lawes: 2. That albeit Ireland was a distinct Dominion, yet the title thereof beeing by conquest, the same by iudgement of law might by expresse words bee bound by the parliamenes of England: 3. That albeit no reser-

uation

uation were in king Johns Charter, yet by iudgement of law a writ of Error did lye in the K. Bench in England, of an erronious iudgement in the kings bench of Ireland. Furthermore, in the case of the conquest of a Christian kingdome, as well those that serued in wars at the conquest, as those that remained at home for the safetie and peace of their countrey, & other the kings subiects, as well Antenati as Postnati are capable of lands in the kingdome or countrey conquered, and may maintaine any reall action, and haue the like priuiledges and benefits there, as they may haue in England.

The 3. kind of enemie is, inimicus permissus, an enemie that cõmeth into the realme by the kings safe cõduct, of which you may read in the Register fo. 25. Booke of Entries Electione firmæ 7. 32. H. 6. 23. &c. Now what a subiect borne is, appeareth at large by that which hath bin said de ligeantia; & so likewise de subdito dato, of a donaison, for that is the right name, so called, because his legitimation is giuẽ vnto him: for if you deriue denizen from deins nee, one borne within the obedience or ligeance of the king, thẽ such a one should be all one with a natural borne subiect: and it appeareth before out of the laws of king Ed. the 1. of what antiquitie the making of denizens by the K. of England hath beene.

3 There be regularly (vnlesse it be in special cases) 3. incidẽts to a subiect borne: 1. That the parents be vnder the actual obedience of the king: 2. That the place of his birth bee within the kings dominion: And 3. the time of his birth is chiefely to be cõsidered. for he cannot be a subiect borne of one kingdom, that was borne vnder the ligeance of a king of another kingdome, albeit afterwards one kingdome discend to the king of the other. For the first, it is termed actuall obedience, because though the king of England hath absolute right to other kingdoms or dominiõs as France, Acquitaine, Normandy &c. yet seeing the king is not in actuall possession thereof, none borne there since the crowne of England was out of actuall possession therof, are subiects to the K. of England. 2. The place is obseruable, but so, as many times ligeance or obedience, without any place within the K. dominions, may make a subiect borne, but any place within the K. dominions without obedience, can neuer produce a naturall subiect. And therfore if any of the K. embassadors in forein natiõs, haue children there of their wiues, being English women, by the common lawes of England they are natural borne subiects, & yet they are borne out of the K. dominions. But if enemies should come into any of the kings dominions, & surprise any castle or fort, and possesse

Of the incidents to an alien.

poſſeſſe the ſame by hoſtilitie, and haue iſſue there, that iſſue is no ſubiect to the king, though hee bee borne within his dominions, for that hee was not borne vnder the kings ligeance or obedience. But the time of his birth is of the eſſence of a ſubiect borne: for he cannot be a ſubiect to the king of England, vnleſſe at the time of his birth he was vnder the ligeance and obedience of the king. And that is the reaſon that Antenati in Scotland (for that at the time of their birth they were vnder the ligeance and obedience of another king) are aliens borne, in reſpect of the time of their birth.

Wherefore an alien borne is not capable of lands.

4 It followeth next in courſe, to ſet downe the reaſons, wherefore an alien borne is not capable of inheritance within England, and that he is not for three reaſons: 1. The ſecrets of the Realme might thereby be diſcouered: 2. The reuenues of the Realme (the ſinewes of warre, and ornament of peace) ſhould be taken and enioyed by ſtrangers borne: 3. It ſhould tend to the deſtruction of the Realme. Which three reaſons doe appeare in the ſtatutes of 2.H.5.cap. and 4.H.5.cap.vltimo. But it may be demaunded, Wherein doth that deſtruction conſiſt? Whereunto it is anſwered: Firſt, it tends to deſtruction tempore belli; for then ſtrangers might fortifie themſelues in the heart of the Realme, and bee readie to ſet fire on the Commonwealth, as was excellently ſhadowed by the Troian horſe in Virgils 2. Booke of the Eneads, where a verie few men in the heart of the citie, did more miſchiefe in few howers, than x thouſand men without the walls in ten yeares: Secondly tempore pacis, for ſo might many aliens borne get a great part of the inheritance and freehold of the Realme, whereof there ſhould follow a failer of iuſtice (the ſupporter of the Commonwealth) for that aliens borne cannot bee returned of Juries for the tryall of iſſues betweene the king and the ſubiect, or betweene ſubiect and ſubiect. And for this purpoſe and many other, ſee a Charter (worthy of obſeruation) of R. E. 3. written to Pope Clement, Datum apud Weſt 26.die Sept.anñ regni noſtri Franciæ 4, regni Angliæ 17.

Examples and authorities in law.

5 Now are we come to the examples, reſolutions, and iudgments, of former times: wherein two things are to be obſerued. Firſt, how many caſes in our bookes doe ouerrule this caſe in queſtion (for vbi eadem ratio ibi idem ius, & de ſimilibus idem eſt iudicium:) 2. That for want of an expreſſe text of law in terminis terminantibus, and of examples and preſidents in like caſes (as was obiected by ſome) wee are driuen to determine the queſtion by naturall reaſon: for it was ſaid, Si ceſſet lex ſcripta id cuſtodiri oportet

oportet quod moribus & conſuetudine inductum eſt, & ſi qua in re hoc defecerit, recurrendum eſt ad rationem. **But that receiueth a threefold anſwere: Firſt, that there is no ſuch rule in the common or ciuile Law; but the true rule of the Ciuile Law is,** Lex ſcripta ſi ceſſet, id cuſtodiri oportet quod moribus & conſuetudine inductum eſt, & ſi qua in re hoc defecerit, tunc id quod proximum & conſequens ei eſt, & ſi id non appareat, tunc ius quo vrbs Roma vtitur, ſeruari oportet. **Secondly, if the ſaid imaginatiue rule bee rightly and legally vnderſtood, it may ſtand for truth: for if you intend** ratio **for the legall and profound reaſon of ſuch as by diligent ſtudie and long experience and obſeruation are ſo learned in the Lawes of this Realme, as out of the reaſon of the ſame they can rule the caſe in queſtion, in that ſence the ſaid rule is true: but if it bee intended of the reaſon of the wiſeſt man that profeſſeth not the Lawes of England, then (I ſay) the rule is abſurd and dangerous:** for cuilibet in ſua arte perito eſt credendum, & quod quiſque norit in hoc ſe exerceat. Et omnes prudentes illa admittere ſolent quæ probantur ijs qui in ſua arte benè verſati ſunt. Ariſt. 1. Topicorum, cap. 6. **Thirdly, there be multitudes of examples, preſidents, iudgements, and reſolutions in the Lawes of England, the true and vnſtrayned reaſon whereof doth decide this queſtion; for example: The Dukedome of Acquitaine, whereof Gaſcoine was parcell, and the Earledome of Poytiers came to K. Henry the ſecond by the mariage of Elianor daughter and heire of William Duke of Acquitaine, and Earle of Poytiers, which diſcended to** Rich. 1. H. 3. Ed. 1. E. 2. E 3. &c. **In** 27. lib. Aſſ. pl. 48. **in one caſe there appeare two iudgements and one reſolution to be giuen by the Iudges of both Benches in this caſe following. The poſſeſſions of the Prior of Chelſey in time of warre were ſeiſed into the Kings hands, for that the Prior was an alien borne: the Prior by petition of right ſued to the King, and the effect of his petition was, That before he became Prior of Chelſey, he was Prior of Andouer, and whiles he was Prior there, his poſſeſſions of that Priorie were likewiſe ſeiſed for the ſame cauſe, ſuppoſing that he was an alien borne; whereupon he ſued a former petition, and alleadged, that he was borne in Gaſcoine within the ligeance of the King: which point beeing put in iſſue, and found by Iurie to be true, it was adiudged, that he ſhould haue reſtitution of his poſſeſſions generally, without mentioning of aduowſons. After which reſtitution, one of the**

Gaſcoine. Vaſconia. Gaſconia.

said aduowsons became void, ỹ Prior presẽted, against whõ the K. brought a Quare impedit, wherin the K. was barred, & all this was cõtained in the later petitiõ. And the booke saith, That the Earle of Arundell and Sir Guy de B. came into the Court of common pleas, and demaunded the opinion of the Iudges of that court concerning the said case, who resolued, that vpon the matter aforesaid the king had no right to seise. In which case, amongst many notable points, this one appeareth to be adiudged and resolued, that a man borne in Gascoin vnder the kings ligeance, was no alien borne, as to lands and possessions within the Realme of England; and yet England and Gascoine were seuerall and distinct countries, 2. inherited by seuerall & distinct titles, 3. gouerned by seuerall and distinct municipall lawes, as it appeareth amongst the Records in the Tower, Rott. Vasc. 10. E. 1. Num. 7. 4. out of the extent of the great Seale of England, and the iurisdiction of the Chaunceric of England, 5. the like obiection might be made for default of triall, as hath been made against the plaintife. And where it was said that Gascoin was no kingdome, and therefore it was not to be matched to the case in hand, it was answered, that this difference was without a diuersitie, as to the case in question: for if the plea in the case at the barre be good, then without question the Prior had bin an alien: for it might haue bin said (as it is in the case at the barre) that he was borne extra ligeantiã regis regni sui Angliæ, & infra ligeantiã dñij sui Vasconiæ, and that they were seuerall dominions, & gouerned by seuerall lawes: but then such a conceit was not hatched, that a K. hauing seuerall dominions, should haue seuerall ligeances of his subiects. Secondly it was answered, that Gascoin was sometime a kingdome, as likewise Millain, Burgundy, Bauier, Brittaine, & others were, & now are become dukedomes. Castile, Arragon, Portugal, Barcelona, &c. were sometime Earledoms, afterwards dukedomes, & now kingdomes. Bohemia & Polonia were sometime dukedomes, and now kingdoms, & (omitting many other, & cõming nearer home) Ireland was before 32. H. 8. a Lordship, & now is a kingdome, & yet the K. of England was as absolute a Prince and Soueraigne when hee was Lord of Ireland, as now, when hee is stiled king of the same. 10. Ed. 3. 41. an exchange was made betweene a Englishman and a Gascoine, of lands in England and in Gascoine, ergo the Gascoyne was no alien, for then had hee not beene capable of landes in England. 1. H. 4. 1. the king brought a Writ of right of ward against one Sybill, whose husband was exiled into Gascoine,

Vasconia appellata fuit tempore Caroli magni regnum de Vasconia

ergo

ergo Gaſcoine is no parcell or member of England, for exilium eſt patriæ priuatio, natalis ſoli mutatio, legum natiuarum amiſſio. 4. E.4.10. the king directed his writ out of the Chauncerie vnder the great Seale of England, to the Maior of Burdeaux (a Citie in Gaſcoine) then being vnder the kings obedience, to certifie, whether one that was outlawed here in England, was at that time in the kings ſeruice vnder him in obſequio Regis: whereby it appeareth, that the kings writ did run into Gaſcoine, for it is the triall that the common Law hath appointed in that caſe. But as to other caſes it is to be vnderſtood, that there be two kind of Writs, viz. breuia mandatoria & remedialia, & breuia mandatoria & non remedialia: breuia mandatoria & remedialia, as Writs of Right, of Formedon, &c. of Debt, Treſpaſſe, &c. and ſhortly, all writs reall and perſonall, whereby the party wronged is to recouer ſomewhat, and to be remedied for that wrong that was offered vnto him, are returnable or determinable in ſome Court of Juſtice within England, and to be ſerued and executed by the Sherifes, or other miniſters of Juſtice within England; and theſe cannot by any meanes extend into any other kingdome, Countrey, or Nation, though that it be vnder the kings actuall ligeance and obedience. But the other kind of Writs that are mandatorie, and not remediall, are not tyed to any place, but doe follow ſubiection and ligeance, in what Countrey or Nation ſoeuer the Subiect is, as the kings Writ to commaund any of his ſubiects reſiding in any forraine Countrey to returne into any of the kings owne Dominions, Sub fide & ligeantia quibus nobis tenemini. And ſo are the aforeſaid mandatorie Writs cited out of the Regiſter of Protection for ſafetie of body and goods, and requiring, that if any iniurie be offered, that the ſame be redreſſed according to the Lawes and Cuſtomes of that place. Vide le Regiſter, fol.26. Stamford prærog. cap.12. fol.39. ſayth, That men borne in Gaſcoine are inheritable to lands in England. This doth alſo appeare by diuers acts of Parliament: for by the whole Parliament, 39 E.3. cap.16. it is agreed, that the Gaſcoines are of the ligeance and ſubiection of the King. Vide 42. Ed.3. cap.2. & 28. H.6.cap.5. &c.

Guyen was another part of Aquitaine, and came by the ſame title: and thoſe of Guyen were by act of Parliament in 13. H. 4. not imprinted, ex Rott. parliamentꝰ eodē anno, adiudged & declared to be no aliens, but able to poſſeſſe and purchaſe &c. lands within this Realme. And ſo doth Stamford take the law, ꝓrog.c.12.f.39. Guyen. Guienna.

And thus much of the dukedome of Acquitaine, which (together with the Earledome of Poytiers) came to king Henry the second (as hath beene said) by mariage, and continued in the actuall possession of the kings of England by tenne discents, viz. from the first yeare of king Henry the second, vnto the two and thirtieth yeare of king Henry the sixt, which was vpon the very point of three hundred yeares, within which Duchy there were (as some write) 4. Archbish. 24. Bishop. 15. Earledomes, 202. Baronies, and aboue a thousand Captaineships & Bailiwikes: & in all this long time, neither booke case nor record can be found wherein any plea was offered to disable any of them that were born there, by forraine birth, but the contrary hereof directly appeareth by the said booke case of 27. lib. Ass. 48.

Normandy. Normannia. Normandia. The kings of England had sometime Normandie vnder actuall ligeance and obedience. The question is then, whether men borne in Normandy, after one king had them both, were inheritable to lands in England; and it is euident by our bookes that they were: for so it appeareth by the declaratory act of 17. E. 2. de prærogatiua regis, cap. 12. that they were inheritable to and capable of lands in England: for the purview of that Statute is, Quod rex habebit escaetas de terris Normannorum &c. ergo Normanes might haue lands in England: & hoc similiter intelligendum est, si aliqua hæreditas discendat alicui nato in partibus transmarinis &c. whereby it appeareth, that they were capable of lands within England by discent. And that this act of 17. Ed. 2. was but a declaration of the common Law, it appeareth both by Bracton who (as it hath beene said) wrote in the raigne of Henry the third, lib. 3. tract. 2. c. 1. f. 116. and by Britton, who wrote in 5. E. 1. c. 18. that all such lands as any Norman had either by discent or purchase, escheated to the K. for their treason, in reuolting from their naturall liege Lord and Soueraigne. And therefore Stamford prog. ca. 12. fol. 39. expounding the said statute of 17. E. 2. ca. 12. concludeth, that by that chapter it should appeare (as if he had said, it is apparant without question) that all men born in Normandy, Gascoin, Guyan, Aniou, & Brittaine (whiles they were vnder actual obedience) were inheritable within this realme as wel as Englishmen. And the reason thereof was, for that they were vnder one ligeance due to one Soueraigne. And so much (omitting many other authorities) for Normandy: sauing I cānot let passe the Iles of Iernsey & Gersey, parts & parcels of the dukedom of Normandy, yet remaining vnder the actuall ligeance and obedience of the king. I think no man will doubt, but those that are

Iernsey and Gersey.

borne

borne in Iernſey and Gerſey (though thoſe Iſles are no parcell of the Realme of England, but ſeuerall dominions, enioyed by ſeuerall titles, gouerned by ſeuerall lawes) are inheritable and capable of any lands within the Realme of England. 1.E.3.fo. 7. Commiſſion to determine the title of lands within the ſayd Iſles, according to the lawes of the Iſles: and Mich. 41.E.3. in the Treaſurie, Quia negotium prædictum nec aliqua alia negotia de inſula prædict' emergentia non debent terminari niſi ſecundum legem inſulæ prædict' &c. And the Regiſter, fol. 22. Rex fidelibus ſuis de Iernſey & Gerſey. King William the firſt brought this dukedome of Normandy with him, which by fiue diſcents continued vnder the actuall obedience of the kings of England, and in or about the ſixt yeare of king John, the Crowne of England loſt the actuall poſſeſſion thereof, vntil king Henry the fift recouered it againe, & left it to k. Henry the ſixt, who loſt it in the 28. yere of his raigne: wherein were (as ſome write) one Archbiſhoprick, & ſix Biſhoprickes, and an hundred ſtrong townes and fortreſſes, beſides thoſe that were waſted in warre. Maud the Empreſſe, the onely daughter and heire to Henry the firſt, tooke to her ſecond huſband Jeffrey Plantagenet, Earle of Aniou, Tourain, and Mayne, who had iſſue king H.2. to whō the ſaid earledome by iuſt title diſcended, who, and the kings that ſucceeded him, ſtyled themſelues by the name of Comes Andegauiæ &c. vntill k. E.3. became king of all France: and ſuch as were borne within that Earledome, ſo long as it was vnder the actual obedience of the k. of England, were no aliens, but naturall borne ſubiects, & neuer any offer made that we can find to diſable them for forrein birth. But leaue we Normandy & Aniou, and ſpeake we of the little, but yet ancient & abſolute kingdome of the Iſle of Manne, as it appeareth by diuers anciēt & autentike records; as taking one for many. Artold k. of Manne ſued to k. H.3. to come into England to conferre with him, and to performe certaine things which were due to k. H.3, thereupon k. H.3. 28. Decemb. anñ regñ ſui 34. at Wincheſter by his letters patēts gaue licence to Artold k. of Manne as followeth: Rex oībus ſaluṫ. Sciatis, qd' licentiā dedimus &c. Artoldo regi de Manne veniendo ad nos in Angliā ad loquēd' nobiſc', & ad faciend' nobis qd' facere debet; & ideo vobis mādamus qd' ei regi in veniendo ad nos in Angl', vel ibi morando, vel inde redeundo nullum faciatis aut fieri permittatis damnum, iniuriam, moleſtiam, aut grauamen, vel etiam hominibus ſuis quos ſecum ducet, & ſi aliquid eis forisfactum fuerit, id eis ſine dilatione faciatis emendari. In cuius &c. duraturṫ vſque ad feſtum ſancti Michaelis. Wherein two things are

Manne. Mannia.

to be obserued: 1. That seeing that Artold king of Manne sued for a licence in this case to the king, it proueth him an absolute king: for that a Monarch or an absolute prince cannot come into England without licence of the king, but any subiect being in league, may come into this Realme without licence: 2. That the king in his licence doth style him by the name of a king. It was resolued in 11.H.8. that where an office was found after the decease of Thomas Earle of Darby, and that hee died seised &c. of the Isle of Manne, that the said office was vtterly void, for that the Isle of Manne, Normandie, Gascoine &c. were out of the power of the Chaunce-rie, and gouerned by seuerall lawes; and yet none will doubt, but those that are borne within that Isle, are capable and inheritable of lands within the Realme of England. Wales was sometimes a kingdome, as it appeareth by 19.H.6.fol.6. and by the act of Parliament of 2.H.5.cap.6. but whiles it was a kingdome, the same was holden, and within the fee, of the king of England: and this appeareth by our bookes, Fleta lib. 1. cap. 16. 1.E.3.14. 8.E.3.59. 13.E.3. tit Iurisdict. 10.H.4.6. Plow. Com.368. And in this respect, in diuers auncient Charters, kings of old time styled themselues in seuerall manners, as king Edgar, Britanniæ Βασιλεύς, Etheldredus, totius Albionis dei prouidentia Imperator, Edredus magnæ Britanniæ monarcha, which among many other of like nature I haue seene. But by the Statute of 12. E.1. Wales was vnited and incorporated into England, and made parcell of England in possession, and therefore it is ruled in 7.H.4.fol.14. that no protection doth lie quia moratur in Wallia, because Wales is within the Realme of England. And where it is recited in the act of 27.H.8. that Wales was euer parcell of the Realme of England, it is true in this sence, viz. that before 12. E.1. it was parcell in tenure, and since it is parcell of the body of the Realme. And whosoeuer is borne within the fee of the king of England, though it be in another kingdome, is a naturall borne subiect, and capable and inheritable of lands in England, as it appeareth in Plow. Com. 126. And therefore those that were borne in Wales before 12.E.1. whiles it was onely holden of England, were capable and inheritable of lands in England.

Wales. Cambria. Wallia.

Now come we to Fraunce and the members thereof, as Callice, Guynes, Tournay, &c. which discended to king Edward the third, as sonne and heire to Isabell, daughter and heire to Philip le Beau, king of Fraunce. Certaine it is, whiles king

France. Gallia. Francia.

King Henry the firſt had both England and the heart and greateſt part of France vnder his actuall ligeance and obedience (for he was crowned King of France in Paris) that they that were then borne in thoſe parts of Fraunce, that were vnder actuall ligeance and obedience, were no aliens, but capable & inheritable to lands in England. And that is prooued by the writs in the Regiſter, fol. 26. cited before. But the inrolment of letters patents of denization in the Exchequer in̄ originalia, Anno 11. H. 6. with the Lord Treaſurers Remembrancer, was ſtrongly vrged and obiected: for (it was ſaid) thereby it appeareth, that King H. 6. in Anno 11. of his raigne did make denizen one Reynell, borne in Fraunce: Whereunto it was anſwered, that it is proued by the ſaid Letters patēts, that he was borne in France before King Henry the firſt had the actuall poſſeſſion of the Crowne of France, ſo as he was Antenatus: and this appeareth by the ſaid Letters patents, whereby the King graunteth, that Magiſter Iohannes Reynell ſeruiens noſter &c. infra regnum noſtrum Franciæ oriundus, pro termino vitæ ſuæ ſit ligeus noſter, & eodem modo teneatur ſicut verus & fidelis noſter infra regnum Angliæ oriundus, ac quod ipſe terras infra regnum noſtrum Angliæ ſeu alia dominia noſtra perquirere poſſit & valeat. Now if that Reynell had bin borne ſince Henry the firſt had the quiet poſſeſſion of France (the King being crowned King of France about one yeare before) of neceſſitie he muſt be an infant of very tender age, and then the K. would neuer haue called him his ſeruant, nor made the Patent (as thereby may be collected) for his ſeruice, nor called him by the name of Magiſter Iohannes Reynell: But without queſtion he was Antenatus, borne before the King had the actuall and reall poſſeſſion of that Crowne.

Callice is a part of the kingdome of Fraunce, and neuer was parcell of the kingdome of England, and the kings of England enioyed Callice in & from the raigne of King Edward the third, vntill the loſſe thereof in Q. Maries time, by the ſame title that they had to Fraunce. And it is euident by our bookes, that thoſe that were borne in Callice, were capable & inheritable to lands in England, 42. E. 3. cap. 10. Vide 21. H. 7. 33. 19. H. 6. 2. E. 4. 1. 39. H. 6. 39. 21. E. 4. 18. 28. H. 6. 3. b. By all which it is manifeſt, that Callice being parcell of Fraunce, was vnder the actuall obedience and commaundement of the King, and by conſequent thoſe that were borne there, were naturall borne ſubiects, and no aliens. Callice from the raigne of K. E. 3. vntill the 5. yeare of Qu. Marie, remained vnder the actual obedience of the King of Eng. Guynes

Callice. Calecia. Caletum.

Guines. Guines alſo, another part of Fraunce, was vnder the like obedience to king Henry the firſt, as appeareth by 32.H.6.fol.4. And

Tournay. Tournay was vnder the obedience of Henry the eight, as it appeareth by 5.Eliz.Dyer, fol.224. for there it is reſolued, that a baſtard borne at Tournay, whiles it was vnder the obedience of Henry the eight, was a natural ſubiect, as an iſſue borne within this realme by aliens. If then thoſe that were borne at Tournay, Callice, &c. whiles they were vnder the obedience of the king were natural ſubiects, and no aliens, it followeth, that when the kingdome of Fraunce (whereof thoſe were parcels) was vnder the K. obedience, that thoſe that were then borne there, were naturall ſubiects, and no aliens.

Ireland. Hibernia. Next followeth Ireland, which originally came to the kings of England by conqueſt, but who was the firſt conqueror thereof, hath beene a queſtion. I haue ſeene a Charter made by king Edgar in theſe words: Ego Edgarus Anglorum Βασιλεὺς, omniumq; inſularum oceani, quæ Britanniam circumiacent, Imperator & Dominus, gratias ago ipſi Deo omnipotenti regi meo, qui meum imperium ſic ampliauit & exaltauit ſuper regnum patrum meorum &c. mihi conceſſit propitia diuinitas, cum Anglorum imperio omnia regna inſularũ oceani, cum ſuis ferociſſimis regibus vſque Noruegiam, maximamque partem Hiberniæ, cum ſua nobiliſſima ciuitate de Dublina, Anglorum regno ſubiugare, quapropter & ego Chriſti gloriam & laudem in regno meo exaltare, & eius ſeruitium amplificare deuotus diſpoſui &c. Yet for that it was wholly conquered in the raigne of Henry the ſecond, the honour of the conqueſt of Ireland, is attributed to him, and his ſtyle was, Rex Anglię, dominus Hiberniæ, dux Normaniæ, dux Aquitaniæ, & comes Andegauiæ, king of England, lord of Ireland, duke of Normandy, duke of Aquitaine, and earle of Aniou. That Ireland is a Dominion ſeperate and diuided from England, it is euident by our bookes, 20. H. 6. 8. Sir Iohn Pilkingtons caſe, 32. H.6. 25. 20. Eliz. Dyer 360. Plow. Com. 360. And 2.R.3. 12. Hibernia habet parliamentum, & faciunt leges, & noſtra ſtatuta non ligant eos, quia non mittunt milites ad parliamentum (which is to be vnderſtood, vnleſſe they be eſpecially named) ſed perſonæ eorum ſunt ſubiecti regis, ſicut inhabitantes in Caleſia, Gaſconia, & Guyan. Wherein it is to be obſerued, that the Iriſh man (as to his ſubiection) is compared to men borne in Callice, Gaſcoigne, and Guyan. Concerning their Lawes, Ex rottulis patentium de Anno 11. Regis H.3. there is a Charter which that king made, beginning in theſe words: Rex &c. Baronibus, militibus, & omnibus libere tenentibus L. ſalutem, ſatis vt credimus veſtra

au-

audiuit diſcretio, quod quando bonæ memoriæ Iohannes quondã Rex Angliæ pater noſter venit in Hiberniam, ipſe duxit ſecum viros diſcretos & legis peritos, quorum communi cõſilio & ad inſtantiam Hibernenſiũ ſtatuit & præcepit leges Anglicanas in Hibernia, ita quod leges eaſdem in ſcripturas redactas reliquit ſub ſigillo ſuo ad ſcaccarium Dubliñ. So as now the Lawes of England became the proper Lawes of Ireland: and therfore, and becauſe they haue parliaments holden there, whereat they haue made diuers particular lawes concerning that dominion, as it appeareth in 20.H.6.8. & 20.Eli.Dyer 360. and for that they retaine vnto this day diuers of their ancient cuſtomes, the booke in 20.H.6.8. holdeth, that Ireland is gouerned by lawes and cuſtomes, ſeperate & diuers from the lawes of England. A voyage royall may be made into Ireland. Vide 11.H.4.7.& 7.E.4.27. which proueth it a diſtinct dominion. And in Anno 33.reg.El. it was reſolued by all the Iudges of England in the caſe of Ozurke an Iriſhman, who had committed high Treaſon in Ireland, that he by the ſtatute of 33.H.8.c.23. might be indited, arraigned, and tried for the ſame in England, according to the puruiew of that ſtatute: the words of which ſtatute be, That all Treaſons &c. committed by any perſon out of the realme of England, ſhall be from henceforth inquired of &c. And they all reſolued (as afterward they did alſo in Sir Iohn Perrots caſe) That Ireland was out of the Realme of England, and that Treaſons committed there, were to bee tried within England by that Statute. In the Statute of 4.H.7.cap.24. of Fines, prouiſion is made for them that be out of this the land, & it is holden in Pl.Com̃ in Stowels caſe 375. that he that is in Ireland, is out of this land, and conſequently within that prouiſo. Might not then the like plea be deuiſed as well againſt any perſon borne in Ireland, as (this is againſt Caluin that is a Poſt-nat') in Scotland? For the Iriſhman is borne extra ligeantiam regis regni ſui Angliæ &c. which be verba operatiua in the plea: But all men know, that they are naturall borne Subiects, and capable of and inheritable to lands in England. Laſtly, to conclude this part with Scotland it ſelfe; in auncient time part of Scotland (beſides Berwick) was within the power and ligeance of the K. of England, as it appeareth by our bookes 42.E.3.2. the L. Beaumonts caſe, 11.E.3.c.2.&c. and by preſidents hereafter mentioned; and that part (though it were vnder the K. of Englãds ligeance and obedience) yet was it gouerned by the lawes of England. Ex rott. Scotiæ, An.11.E.3. amongſt the records in the Tower of London. Rex &c. Conſtituimus Rich. Talebot Iuſticiarium noſtrum villæ Berwici

Scotland. Scotia.

Berwici ſuper Twedam, ac omnium aliarum terrarum noſtrarum in partibus Scotiæ, ad faciend' omnia & ſingula quæ ad officium Iuſticiarij pertinẽt ſecundum legem et conſuetudinem regni Scotiæ. And after Anno 26.E.3.ex eodem Rott. Rex Henrico de Percey & Richardo de Neuill &c. volumus et vobis et alteri veſtrum tenore pręſentium committimus et mandamus,quod homines noſtri de Scotia ad pacem et obedientiam noſtram exiſtentes, legibus, libertatibus, et liberiś conſuetudinibus, quibus ipſi et anteceſſores ſui tempore celebris memoriæ Alexandri quondam Regis Scotię rationabilitèr vſi fuerunt, vti & gaudere deberent,prout in quibuſdam Indenturis &c.plenius dicit contineri. And there is a writ in the Regiſter 295. a Dedimus poteſtatem recipiendi ad fidem & pacem noſtram homines de Galloway. Now the caſe in 42.Edw.3.2. (which was within ſixteene yeares of the ſaid Graunt, concerning the Lawes in 26.E.3.) ruleth it, That ſo many as were borne in that part of Scotland, that was vnder the ligeance of the King, were no aliens, but inheritable to lands in England; yet was that part of Scotland in another kingdome gouerned by ſeuerall Lawes &c. And if they were naturall Subiects in that caſe, when the King of England had but part of Scotland, what reaſon ſhould there be,why thoſe that are borne there, when the King hath all Scotland,ſhould not be naturall Subiects, and no aliens? So likewiſe Berwicke is no part of England,nor gouerned by the Lawes of England; and yet they that haue bin borne there, ſince they were vnder the obedience of one King,are naturall borne Subiects, and no aliens, as it appeareth in 15. R.2.cap.7.&c. Vide 19.H.6.35.& 39.H.6.39. And yet in all theſe caſes and examples, if this new deuiſed plea had beene ſufficient, they ſhould haue beene all aliens againſt ſo many iudgements, reſolutions, authorities, and iudiciall Preſidents, in all ſucceſſions of ages. There were ſometimes in England, whiles the Heptarchie laſted, ſeuen ſeuerall crowned Kings of ſeuen ſeuerall and diſtinct kingdomes, but in the end the Weſt Saxons got the Monarchie, and all the other Kings melted (as it were) their Crownes to make one imperiall Diademe for the King of the Weſt Saxons ouer all. Now when the whole was vnder the actual and reall ligeance and obedience of one K. were any that were borne in any of thoſe ſeuerall and diſtinct kingdomes,aliens one to another? Certainly they being borne vnder the obedience of one K.and Soueraigne,were all natural borne ſubiects,and capable of and inheritable vnto any lands in any of the ſaid kingdomes.

Berwicke.

In

In the holy Hiſtory reported by S. Luke, Ex dictamine ſpiritus ſancti, cap. 21. & 22. Act. Apoſtolorum it is certaine, that S. Paule was a Iew, borne in Tarſus, a famous Citie of Cilicia: For it appeareth in the ſaid 21. chapter, 39. verſe, by his owne wordes: Ego homo ſum quidem Iudæus a Tarſo Ciliciæ non ignotæ ciuitatis municeps. And in the 22. chapter, 3. verſe, Ego ſum vir Iudæus natus Tarſo Ciliciæ &c. and then made that excellent Sermon there recorded, which when the Iewes heard, the Text ſaith, verſ. 22. Leuauerunt vocem ſuam dicentes, tolle de terra huiuſmodi, non enim fas eſt eum viuere: vociferantibus autem eis & proijcientibus veſtimenta ſua, & puluerem iactantibus in aerem, Claudius Lyſias the popular Tribune, to pleaſe this turbulent and prophane multitude (though it were vtterly againſt iuſtice and common reaſon) the Text ſaith, Iuſſit Tribunus induci eum in caſtra, 2. flagellis cædi, & 3. torqueri eum (quid ita?) vt ſciret propter quam cauſam ſic acclamarent: and when they had bound Paul with cords, ready to execute the Tribunes vniuſt commaundement, the bleſſed Apoſtle (to auoid vnlawful and ſharp puniſhment) tooke hold of the law of a Heathen Emperor, and ſaid to the Centurion ſtanding by him, Si hominem Romanum & indemnatum licet vobis flagellare? Which when the Centurion heard, he went to the Tribune and ſaid, Quid acturus es? Hic enim homo ciuis Romanus eſt. Then came the Tribune to Paule, & ſaid vnto him: Dic mihi ſi tu Romanus es? at ille dixit, etiam. And the Tribune anſwered, Ego multa ſumma ciuitate hanc conſequutus ſum. But Paul not meaning to conceale the dignitie of his birthright, ſaid, Ego autem & natus ſum: As if he ſhould haue ſaid to the Tribune, You haue your freedome by purchaſe of money, and I (by a more noble meane) by birth-right and inheritance. Protinus ergo (ſayth the Text) diſceſſerunt ab illo qui illum torturi erant, Tribunus quoque timuit poſtquam reſciuit, quia ciuis Romanus eſſet, & quia alligaſſet eum. So as heereby it is manifeſt, that Paule was a Iew, borne at Tarſus in Cilicia, in Aſia Minor, and yet beeing borne vnder the obedience of the Romane Emperor, hee was by birth a Citizen of Rome in Italie in Europa, that is, capable of and inheritable to all priuiledges and immunities of that Citie. But ſuch a plea as is now imagined againſt Caluin might haue made Saint Paule an Alien to Rome. For if the Emperour of Rome had ſeuerall ligeances for euery ſeuerall Kingdome and Countrey vnder his obedience, then might it haue beene ſaid againſt S. Paule, that hee was extra ligeantiam imperatoris regni ſui Italiæ, & infra

ligeanti-

ligeantiam imperatoris regni ſui Ciliciæ &c. But as Saint Paule was Iudæus patria & Romanus priuilegio, Iudæus natione & Romanus iure nationum; So may Caluin ſay, that hee is Scotus patria & Anglus priuilegio, Scotus natione & Anglus iure nationum.

Samaria in Syria was the chiefe Citie of the ten Tribes: but it being vſurped by the King of Syria, and the Iewes taken priſoners, and carried away in captiuitie, was after inhabited by the Paynims. Now albeit Samaria of right belonged to Iurie, yet becauſe the people of Samaria were not vnder actuall obedience, by the iudgement of the chiefe Iuſtice of the whole world they were adiudged Alienigenæ, aliens. For in the Euangeliſt S. Luke, cap. 17. when Chriſt had cleanſed the ten leapers, Vnus autem ex illis (ſaith the Text) vt vidit quia mundatus eſſet regreſſus eſt, cum magna voce magnificans deum & cecidit in faciem ante pedes eius gratias agens, & hic erat Samaritanus. Et Ieſus reſpondens dixit, nonne decem mundati ſunt, & nouem vbi ſunt? Non eſt inuentus qui rediret & daret gloriam Deo niſi hic alienigena. So as by his iudgement this Samaritane was Alienigena, a ſtranger borne, becauſe he had the place, but wanted obedience. Et ſi deſit obedientia non adiuuat locus. And this agreeth with the Diuine, who ſayth, Si locus ſaluare potuiſſet, Satan de cœlo pro ſua inobedientia non cecidiſſet. Adam in paradiſo non cecidiſſet, Lot in monte non cecidiſſet, ſed potius in Sodom.

6. Now reſteth the ſixt part of this diuiſion, that is to ſay, ſixe demonſtratiue illations or concluſions, drawne plainly and expreſſely from the premiſſes.

1. Euery one that is an alien by birth, may be or might haue beene an enemy by accident: but Caluin could neuer at any time be an enemy by any accident; ergo he cannot be an alien by birth. Vide 33. H. 6. fol. 1. the difference betweene an alien enemie and a ſubiect traytor. Hoſtes ſunt qui nobis, vel quibus nos bellum decernimus, cæteri proditores, prædones &c. The maior is apparent, and is proued by that which hath beene ſaid. Et vide Magna Charta cap. 30. 19. E. 4. 6. 9. E. 3. cap. 1. 27. E. 3. cap. 2. 4. H. 5. cap. 7. 14. E. 3. ſtat. 2. cap. 2. &c.

2. Whoſoeuer are borne vnder one naturall ligeance and obedience, due by the Law of Nature to one Soueraigne, are naturall borne Subiects: But Caluin was borne vnder one naturall ligeance and obedience, due by the Law of Nature to one Soueraigne; ergo hee is a naturall borne Subiect.

3. Who=

3. Whoſoeuer is borne within the kings power or protection, is no alien: But Caluin was borne vnder the kings power and protection; ergo he is no alien.

4. Euery ſtranger borne muſt at his birth be either amicus or inimicus: But Caluin at his birth could neither be amicus nor inimicus; ergo he is no ſtranger borne. Inimicus he cannot be, becauſe he is ſubditus, and for that cauſe alſo he cannot be amicus; neither now can Scotia be ſaid to be ſolum amici, as hath beene ſaid.

5. Whatſoeuer is due by the law or conſtitution of man, may be altered: but naturall ligeance or obedience of the ſubiect to the Soueraigne cannot be altered; ergo naturall ligeance or obedience to the Soueraigne is not due by the law or conſtitution of man. Againe, whatſoeuer is due by the law of Nature, cannot be altered: but ligeance and obedience of the ſubiect to the Soueraigne, is due by the law of Nature; ergo it cannot be altered. It hath been proued before, that ligeance or obedience of the inferior to the ſuperior, of the ſubiect to the Soueraign, was due by the law of Nature many thouſand yeeres before any law of man was made: which ligeance or obedience (being the onely marke to diſtinguiſh a ſubiect from an alien) could not be altered, therefore it remaineth ſtill due by the law of Nature. For Leges naturæ perfectiſſimè ſunt et immutabiles, humani vero iuris condito ſæpe in infinitum decurrit, & nihil eſt in eo q̃ perpetuo ſtare poſſit. Leges humanæ naſcuntur, viuunt, & moriuntur.

Laſtly, whoſoeuer at his birth cannot be an alien to the king of England, cannot be an alien to any of his ſubiects of Englād: But the plaintife at his birth could be no alien to the K. of England; ergo the plaintife cannot be an alien to any of the ſubiects of England. The maior and minor both be propoſitiones ꝓſpicuè veræ. For as to the maior it is to be obſerued, that whoſoeuer is an alien borne, is ſo accounted in law in reſpect of the king: and that appeareth firſt by the pleading ſo often before remembred, that he muſt be extra ligeantiam Regis, without any mention making of the ſubiect: 2. When an alien borne purchaſeth any lands, the king onely ſhall haue them, though they be holden of a ſubiect, in which caſe the ſubiect looſeth his Seigniorie. And as it is ſaid in our bookes, an alien may purchaſe ad proficuum Regis; but the act of Law giueth the alien nothing: and therefore if a woman alien marrieth a ſubiect, ſhe ſhall not be endowed, neither ſhall an alien be tenant by the courteſie. Vide 3.H.6.55. 4.H.3.179. 3. The ſubiect ſhall plead, that the defendant is an

alien borne for the benefit of the King, that he vpon office found may seize, and 2. that the tenant may yeeld to the King the land, and not to the alien, because the King hath best right thereunto. 4. Leagues betweene our Soueraigne and others are the only meanes to make aliens friends, & fœdera percutere, to make leagues, onely and wholly pertaineth to the King. 5. Warres do make aliens enemies, and bellum indicere belongeth onely and wholly to the King, and not to the subiect, as it appeareth in 19. E.4. fol.6. 6. The King onely without the Subiect may make not onely letters of Safeconduct, but Letters patents of Denization, to whom, and how many he will, and enable them at his pleasure to sue any of his subiects in any action whatsoeuer, reall or personal, which the King could not do without the subiect, if the subiect had any interest giuen vnto him by the Law in any thing concerning an alien borne: nay the Law is more precise herein, then in a number of other cases, of higher nature: for the King cannot grant to any other to make of strangers borne denizens, it is by the Law it selfe so inseperably and individually annexed to his royall person (as the booke is in 20. H.7. fol.8.) For the Law esteemeth it a point of high Prerogatiue, Ius maiestatis, & inter insignia summæ potestatis, to make aliens borne subiects of the Realme, and capable of the lands and inheritances of England, in such sort as any natural borne subiect is. And therefore by the Statute of 27.H.8.cap.24. many of the most ancient prerogatiues and royall flowers of the crowne, as authoritie to pardon Treason, Murther, Manslaughter, & Felony, power to make Justices in Eyre, Justices of Assise, Justices of Peace and Gaole Deliuerie, & such like, hauing been seuered and diuided from the crowne, were againe reunited to the same: but authority to make letters of Denization, was neuer mentioned therein to be resumed, for that neuer any claymed the same by any pretext whatsoeuer, beeing a matter of so high a point of Prerogatiue. So as the pleading against an alien, the purchase by an alien, leagues and warres betweene aliens, denizations and safeconducts of aliens, haue aspect onely and wholly vnto the King. It followeth therefore, that no man can be alien to the subiect that is not an alien to the King, Non potest esse alienigena corpori, qui non est capiti, non gregi qui non est Regi.

The authorities of Law cited in this case for maintenance of the iudgement, 4.H.3. tit Dower. Bracton lib.5. fo.427. Fleta lib. 6. cap.47. In temps E.1. Hinghams Report, 17.Ed.2.cap.12. 11.Ed.3.

cap.

cap.2. 14.E.3.Statut de Francia. 42.E.3.fo.2. 42.E.3. cap.10. 22.Lib. Aſſ.25. 13.R.2.cap.2. 15.R.2. cap.7. 11.H.4. fol.26. 14.H.4. fol.19. 13.H.4. Statutum de Guyan. 29.H.6. tit Eſtoppell 48. 28.H.6. cap.5. 32.H.6.fol.23. 32.H.6.fol. 26. Littl.temps E.4.lib.2.cap.Villenage. 15. E.4. fol.15. 19.E.4.6. 22.E.4. cap.8. 2.R.3.2.& 12. 6.H.8.fol.2. Dyer. 14.H.8.cap.2. **No manner of ſtranger borne out of the kings obeyſance, 22.H.8. cap.8. Euery perſon borne out of the realme of England, out of the kings obeyſance,** 32.H.8. cap.16. 25.H. 8. cap.15. &c. 4.Edw.6. Plow.Comment fol.2. Fogaſſes caſe, 2.& 3. Ph.& Ma. Dyer 145. Shirleyes caſe, 5.Eliz. Dyer 224. 13.Eliz. cap.7. de Bankrupts: **All Commiſſions auncient and late, for the finding of offices, to intitle the king to the lands of Alien nee: Alſo all Letters Patents of Denization of auncient and later times, doe proue, That he is no alien that is borne vnder the kings obedience.**

The 5. generall part, Concerning inconueniences.

Now are we come to conſider of legall inconueniences: and firſt of ſuch as haue beene obiected againſt the plaintife, and ſecondly of ſuch as ſhould follow, if it had bin adiudged againſt the plaintife.

Of ſuch inconueniences as were obiected againſt the plaintife, there remaine onely foure to be anſwered: for all the reſt are clearely and fully ſatisfied before. 1. **That if** Poſtnati **ſhould be inheritable to our lawes and inheritances, it were reaſon that they ſhould be bound by our Lawes; but** Poſtnati **are not bound by our Statute or common Lawes: for they hauing (as it was obiected) neuer ſo much freehold or inheritance, cannot be returned of Juries, nor ſubiect to ſcot or lot, nor chargeable to Subſidies or Quinzimes, nor bound by any act of Parliament made in England.** 2. **Whether one be borne within the kingdome of Scotland, or no, is not tryable in England, for that it is a thing done out of this Realme, and no Jurie can be returned for the triall of any ſuch iſſue: and what inconuenience ſhould thereof follow, if ſuch pleas that wanted triall ſhould be allowed (for then all aliens might imagine the like plea) they that obiected it, left it to the conſideration of others.** 3. **It was obiected, That this innouation was ſo dangerous, that the certaine euent thereof no man could foreſee; and therefore ſome thought it fit, that things ſhould ſtand and continue as they had beene in former time, for feare of the worſt.** 4. **If** Poſtnati **were by law legitimated in England, it was obiected what inconuenience & confuſion ſhould follow,**

if (for the punishment of vs all) the Kings royall issue should faile &c. whereby those kingdomes might againe bee diuided. All the other arguments and obiections that haue beene made, haue beene all answered before, and need not to bee repeated againe.

1. To the first it was resolued, That the cause of this doubt was the mistaking of the law: For if a Postnatus doe purchase any lands in England, he shall be subiect in respect thereof not onely to the Lawes of this Realme, but also to all seruices and contributions, and to the payment of Subsidies, Taxes, & publique charges, as any denizen or Englishman shalbe; nay, if he dwell in England, the King may commaund him by a Writ of Ne exeat Regnum, that he depart not out of England. But if a Postnatus dwell in Scotland, and haue landes in England, hee shal be chargeable for the same to all intents and purposes, as if an Englishman were owner thereof, & dwelt in Scotland, Ireland, in the Iles of Manne, Iernsey, or Gersey, or elsewhere. The same Law is of an Irishman that dwels in Ireland, and hath land in England. But if Postnati, or Irishmen, men of the Iles of Manne, Iernsey, Gersey, &c. haue lands within England, and dwel here, they shalbe subiect to all seruices & publique charges within this Realme, as any Englishman shall be. So as to seruices & charges the Postnati and Englishmen borne are all in one predicament.

2. Concerning the triall, a threefold answere was thereunto made and resolued. 1. That the like obiection might be made against Irishmen, Gascoines, Normanes, men of the Iles of Manne, Iernsey, and Gersey, of Berwicke &c. al which appeare by the rule of our bookes to be naturall borne subiects; and yet no Iury can come out of any of those countries or places, for triall of their birthes there. 2. If the demãdant or plaintife in any action cõcerning lands be borne in Ireland, Iernsey, Gersey &c. out of the Realme of England, if the tenant or defendant plead, that he was born out of the ligeance of the King &c. the demãdãt or plaintife may reply, that he was borne vnder the ligeance of the King at such a place within England; and vpon the euidẽce the place shall not be materiall, but the only issue shalbe, whether the demãdant or plaintife were borne vnder the ligeance of the King in any of his kingdomes or dominions soeuer: and in that case the Iury (if they will) may find the speciall matter, viz. the place where he was borne, and leaue it to the iudgement of the Court: and that Iurors may take knowledge of things done

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out of the Realme in this and like caſes, vide 7.H.7.8.b. 20.Ed.3. Auerrement 34. 5.R.2.tit Triall 54. 15.E.4.15. 32.H.6.25. Fitz. Na.Br. 196. Vide Dowdales caſe in the ſixt part of my Reports, fol. 47. and there diuers other iudgements be vouched. 3. Browne in Anno 32.H.6. repoꝛteth a iudgement then lately giuen, that where the defendant pleaded, that the plaintife was a Scot, boꝛne at S. Johns Towne in Scotland, out of the ligeance of the king: whereupon they were at iſſue, and that iſſue was tried where the writ was brought, and that appeareth alſo by 27.Aſſ.pl.24. that the Jury did find the Pꝛioꝛ to be boꝛne in Gaſcoine: foꝛ ſo much is neceſſarily pꝛoued by the woꝛds (troue fuit.) And 20.Ed.3.tit Auerrement 34. in iuris vtrum, the death of one of the vouchees was alledged at ſuch a caſtle in Brittaine, and this was inquired of by the Jury: and it is holden in 5.R.2.tit Triall 54. That if a man be adheꝛing to the enemies of the king in Fraunce, his land is foꝛfeitable, and his adherencie ſhalbe tried where the land is, as oftentimes hath beene done, as there it is ſaid by Belknap: And Fitz.Nat.Bre.196. in Mortdaunc', if the auncеſtoꝛ died in itinere peregrinationis ſuæ verſ. terram ſanctam. the Jury ſhall inquire of it. But in the caſe at the barre, ſeeing the defendant hath pleaded the truth of the caſe, and the plaintife hath not denied it, but demurred vpon the ſame, and thereby confeſſed all matters of fact, the Court now ought to iudge vpon the eſpecial matter, euen as if a Jurie vpon an iſſue ioyned in England, as is afoꝛeſaid, had found the eſpeciall matter, and left it to the Court.

3. To the third it was anſwered and reſolued, That this iudgemẽt was rather a renouation of the iudgemẽts & cenſures of the reuerend Judges and Sages of the law in ſo many ages paſt, then any innouation, as it appeareth by the bookes & booke caſes befoꝛe recited: neither haue Judges powꝛer to iudge accoꝛding to that which they thinke to be fit, but that which out of the lawes they know to be right and conſonant to law. Iudex bonus nihil ex arbitrio ſuo faciat, nec propoſito domeſticæ voluntatis ſed iuxta leges & iura pronuntiet. And as foꝛ timores, feares grounded vpon no iuſt cauſe, Qui non cadunt in conſtantem virum, vani timores æſtimandi ſunt.

4. And as to the fourth, it is leſſe then a dꝛeame of a ſhadow, oꝛ a ſhadow of a dꝛeame: foꝛ as it hath beene often ſaid, Naturall legitimation reſpecteth actuall obedience to the Soueraigne at the time of the birth: foꝛ as the Antenati remaine aliens as to the Cꝛowne of England, becauſe they were boꝛn when there were ſeuerall kings of the ſeuerall kingdomes, and the vniting

vniting of the Kingdomes by diſcent ſubſequent, cannot make him a Subiect to that Crowne to which he was an alien at the time of his birth: So albeit the Kingdomes, (which Almighty God of his infinite goodneſſe and mercy diuert) ſhould by diſcent bee diuided, and gouerned by ſeuerall Kings; yet was it reſolued, That all thoſe that were borne vnder one naturall obedience, whiles the Realmes were vnited vnder one Soueraigne, ſhould remayne naturall borne Subiects, and no aliens; for that naturalization due and veſted by birthright, cannot by any ſeperation of the Crownes afterward be taken away: nor he that was by iudgement of Law a naturall Subiect at the time of his birth, become an alien by ſuch a matter ex poſt facto. And in that caſe, vpon ſuch an accident, our Poſtnatus may be ad fidem vtriuſque Regis, as Bracton ſayth in the afore-remembred place, fol. 427. Sicut Anglicus non auditur in placitando aliquem de terris & tenementis in Francia, ita nec debet Francigena & alienigena qui fuerit ad fidem Regis Franciæ audiri placitando in Anglia: ſed tamen ſunt aliqui Francigenæ in Francia, qui ſunt ad fidem vtriuſque, & ſemper fuerunt ante Normanniam deperditam & poſt, & qui placitant hic & ibi, ea ratione qua ſunt ad fidem vtriuſque, ſicut fuit Willihelmus comes mareſchallus & manens in Anglia, & M. de Gynes manens in Francia, & alij plures. Concerning the reaſon drawne from the Etymologies, it made againſt them, for that by their owne deriuation, alienæ gentis and alienæ ligeantiæ is all one: But arguments drawne from Etymologies, are too weake and too light for Iudges to build their iudgements vpon: for Sœpenumero vbi proprietas verborum attenditur, ſenſus veritatis amittitur: and yet when they agree with the iudgement of Law, Iudges may vſe them for ornaments. But on the other ſide, ſome inconueniences ſhould follow, if the plea againſt the plaintife ſhould bee allowed: for firſt it maketh Ligeance locall, videlicet, Ligeantia Regis regni ſui Scotiæ, and Ligeantia Regis regni ſui Angliæ: whereupon ſhould follow, Firſt, That faith or ligeance, which is vniuerſall, ſhould bee confined within locall limits and bounds. Secondly, That the Subiect ſhould not bee bound to ſerue the King in peace or in warre out of thoſe limits. Thirdly, it ſhould illegitimate many, and ſome of noble blood, which were borne in Gaſcoigne, Guyan, Normandie, Callice, Tournay, Fraunce, and diuers other of his Maieſties Dominions, whiles the ſame were in actuall obedi-

obedience, and in Berwicke, Ireland, Iernsey, and Gersey, if this plea should haue been admitted for good. And thirdly, this strange and new deuised plea inclineth too much to countenance that dangerous & desperate error of the Spencers, touched before, to receiue any allowance within Westminster Hall.

In the proceeding of this case, these thinges were obserued, and so did the chiefe Iustice of the Common pleas publiquely deliuer in the end of his argument in the Exchequer Chamber. First, That no commandement or message by word or writing was sent or deliuered from any whatsoeuer to any of the Iudges, to cause them to incline to any opinion in this case: which I remember, for that it is honorable for the State, and consonant to the Lawes and Statutes of this Realme. Secondly, there was obserued, what a concurrence of Iudgemēts, Resolutions, and Rules there bee in our bookes in all ages concerning this case, as if they had beene prepared for the deciding of the question of this point: and that (which neuer fell out in any doubtfull case) no one opinion in al our bookes is against this iudgement. Thirdly, That the fiue Iudges of the kings Bench, who adiorned this case into the Exchequer Chamber, rather adiorned it for weight then for difficultie, for all they in their argumēts vna voce concurred with the iudgement. Fourthly, That neuer any case was adiudged in the Exchequer Chamber with greater concordance and lesse varietie of opinions, the Lo. Chauncellor and twelue of the Iudges concurring in one opinion. Fifthly, That there was not in any remembrance so honourable, great, and intelligent an auditorie at the hearing of the arguments of any Exchequer Chamber case, as was at this case now adiudged. Sixtly it appeareth, That Iurisprudentia legis communis Angliæ est scientia socialis & copiosa: sociable, in that it agreeth with the principles and rules of other excellent Sciences, diuine and humane: copious, for that quamuis ad ea quæ frequentius accidunt iura adaptantur; yet in a case so rare and of such a qualitie, that losse is the assured end of the practise of it (for no alien can purchase lands, but he looseth them, and ipso facto the king is intituled thereunto, in respect whereof a man would thinke few men would attempt it) there should be such a multitude and Farrago of authorities in all successions of ages, in our bookes and booke cases, for the deciding of a point of so rare an accident. Et sic determinata & terminata est ista quæstio.

Super

Caluins caſe.

Super quo viſis & per cur̄ domini Regis hic plenius intellect' om-nibus & ſingulis præmiſſis, diligenterque inſpect' & examinat̄, maturaq; deliberatione inde habit̄, pro eo quod videtur cur̄ domini Regis nunc hic quod placitum prędictum per prædict' Richardum Smyth et Nich. Smyth ſuperius placit̄ minus ſufficiens in lege exiſt. ad prædict' Robertum Caluin a reſponſ. ad breue ſuum prædictum habend' repellend'. Ideo conſiderat̄ eſt per cur̄ domini Regis nunc hic, quod prædict' Richardus Smyth & Nicholaus Smyth ad breue ipſius Roberti vlterius reſpond'.

Mich.

Michaelis 26. & 27. Elizabeth.

Bulwers case.

BVlwer de Dalling in Norff. port action sur son case enuers George Smith, et count com̃t vn Henry Heydon esquier recouer xx. l. &c. in le cõmon bank enuers le pl, & puis iudgement, & deuant execution, le dit Henrie Heydon morust; & puis le dit def. ceo sciant, al W. in le County de Norff. a vtlager le plaintif sur le dit iudgement, in le nosme de Henry Heydon malitios & deceptiuè machinatus est; in performance de q̃l le defend Triñ 23. Eliz. al Westm̃ in Midd purchase vn br̃e de Capias ad satisfaciendum in le nosme le dit Henrie sur le dit iudgement, direct al vic̃ de Loundres, queux p le ꝓcurem̃t le dit def. retorne, Non est inuentus, sur q̃ le def. purchase vn br̃e de Exigent in le nosme le dit Henrie, quel br̃e les dits vic̃ p ꝓcurem̃t le dit def. retorne, q̃ al seũall Hustings le dit ore pl auoit este demaund, Et ad Hustingum de coĩbus pl̃tis tent̃ in Guyldhalda ciuitat̃ prædict' die lunæ prox' post festum Apostol' Simonꝫ & Iudę, anñ supradict̃, prædict' le ore pl quint̃ exactus fuit &c. & ideo ipse le pl vtlagatus fuit. Et puis, s̃. Pasch. 24. Eliz. le def. purchase hors del dit common bank vn br̃e de Capias vtlagatum, in le nosme le dit Henrie, direct al Vicont de Norff. a p̃nder son corps &c. le quel br̃e fist mention, q̃ le dit ore pl fuit vtlage die lunæ prox̃ ante festũ Apostolorũ Simonis & Iudæ &c. & le dit br̃e le def. al W. auantdit in le dit Countie de Norf. deliuer al vn Robert Godfrey adonques deputie del vicont de mesme le Countie, al intent que il executer̃ le dit briefe, le quel Robert, per force del dit briefe, prist et arrest le dit ore pl, et luy imprison p le space de 2. moyes iesque le ore pl purchase son charter de pardon, per reason de quel vtlagarie il forfeit touts ses biens et chateux. Et sur cest count le defendant demurre in ley: Et le principall cause del demurrer fuit, pur ceo que cest action per le pretence del defendant

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couient dauer estr̄ port in Middō ou le tort commence, car la (cōe fuit dit) le def. purchase cibñ le Cap̄ ad satisfac', come le Exigent, & le Cap̄ vtlag. auxy. Et coūt q̄ le Cap̄ vtlag. fuit execute in Norff. vnē lacē couient eē port ou le tort cōmēce: cōe in le cas de cōspiracie in 42. Ed. 3. 14. & diūs auters cases fuer̄ mise. Auxy, p le vtlagar̄, q̄ fuit in Londres, touts ses biens & chateux fuer̄ forfeits, ou est pluis reason a porter lacē q̄ in Norff. Mes fuit rñd & resolue, q̄ laction fuit bin port in Norff. car est vn maxime in ley, qđ ibi semper debet fieri triatio, vbi iuratores melioré possunt haber̄ notitiā, & in Norff. fuit le visible tort, car la le pl̄ fuit imprison p le space de 2. mois: & pur ceo ꝑra grañd reason q̄ le pl̄ poit añ son acc̄ la, & nō cōstat p le record q̄x biens ou chateux le pl̄ ad al temps del vtlagar̄, mes pur aggrauating des dāmages le pl̄ poit doner in euidence q̄x biens et chateux il ad forfeit per le vtlagarie. Et cest action consist sur 2. principall parts, lun, matter de record, et lauter, matter in fait, et nul des matters del record, mes est mixt oue matters in fait, & nul matter in fait, mes est mixt oue matter de record. Car les brēs & le vtlagar̄ sont matters de record, mes mixt oue matters in fait, ſ. le purchasing & prosecution de eux per le def. in nosme de Henrie Heydon, queux sont matters in fait: auxy lemprisonment est matter in fait, mes ceo est mixt oue le briefe de Capias vtlagatum q̄ est de record, ſ. si le pl̄ fuit arrest per vertue de ceo: et matters in fait sont solement triable per pays et nemy matters de recōrd. Et quant lun matter in lun Countie est dependant sur le matter in lauter Countie, la le pl̄ poit eslier in q̄l Countie il voile porter son action (sinon que le defendant sur le generall issue plede, serra preiudice de son triall, come il ne serra in cest case) Come si 2. conspire de enditer vn in vn Countie, & ils p lour malicious ꝓsecution font execution del conspiracie in auter Countie, & la cause le partie deste indite, le plaintife poit auer son action de conspiracie in q̄l Countie que il voit, car ils mittont lour conspiracie in lun Countie, in executiō in lauter Countie, & la matter de record del inditement est mixe oue matter in fait: Mes sils conspiront in vn Countie, per force de quel conspiracie sanz aſcun auter act p eux, il est indite in auter Countie, la le brē couient este port in le Countie ou le conspiracie fuit, car les def. ount fait riens in le Countie ou le indictment fuit, ne fuer̄ parties ou priuies al trouer del indictiñt, forsq̄ solement p le conspiracie in lauter Countie. Et ceo appiert in 14. Ed. 4. 3. b. & illint les liures in 42. E. 3. 14. 20. H. 6. 10. Fitz. N. B. 116. b. et auters liures bien reconcile. Si manasse soit fait in Essex, per que mes tenants recead in Londres, ieo añ̄a mon action in Essex, & nemy

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in Londres, car in tiel case ieo ay fait riens in Londres, 9.H.6.42. En touts cases quant laction est foundue sur 2. choses, & ambideux sont materiall ou trauersable, & lun sans lauter ne maintaine laction, la le pl' poit eslier a porter son acõ in q̃l des Counties il voit: Come si seruant soit retaine in vn Countie & depart in auter: & oue ceo accord̃ 41.Ed.3.fol.1. 34.H.6.18. 38.H.6.15. 14 E.4.6. 20.H.6.11. 29.H.8.Dier 38. Vide 20.E.3.25.&c. Jssint si hõe soit arrest in execution in vn Countie & il escape in auter countie, le pl' poit eslier a porter laction in quel des Counties il voit: et oue ceo accord̃ 14.E.4 3. 30.H.6.6. 11.Eliz.278. Jssint in br̃e Dannuitie foundue sur prescription vers home de religion, ou corps corporate, ou lesglise ou mesons est in vn countie, & le seisin est alledge in auter countie; le pl' poit eslier in quel countie il voit porter son action, 48.Ed.3.26. 4.H.4.1. 4.H.6.5.b. 10.H.6.19. 39. H.6.15. 2.E.4.28. 4.Ed.4.26.&c. Fitz.Nat.Br.152. Auterm̃t, si annuitie soit grant in vn countie, destre pay in auter, action gist ou le grant fuit: et oue ceo accord̃ 8.H.6.23. Jssint si home cite vn in vn countie, dappearer deuant ladmiral in auter countie, pur chose fait in le corps del countie, per force de que le ptie appiert, il poit auer son action in lun countie ou lauter a son pleasure, 5. Mar̃ Dier 159.b. Vide 42.E.3.14. 44.E.3.31.32. 46.E.3.8. 3.H.4.3.a. 38.H.6.14. 14.Ed.4.3. Mesm̃ la ley de Court Xpien. Jssint si def. iect ptection in lun countie, & remaine in auter countie, il poyt porter laction in quel des counties il luy pleist: Vide 20.H.6.10. Jssint si hõe ad feruit vn in vn countie, et il morust in aut̃ countie, appeale de murder poet auer estre port in lun countie ou lauter: & vncore le def. fist riens in le countie ou le partie morust, mes le mort que insuist sur le ferue fait le felonie, 18.Ed.3.32. 9.H.6. 63. 45.Ass.pla.9. 43.Ed.3. 3.H.7.12. 4.H.7.18. 6.H.7.10. 11.H.4. 93. Si home commit Robberie in vn countie, & carrie les biens in diuers counties, le partie robbe poit auer appeale de felonie in quel des counties il voyt, mes nemy appeale de Robberie mes solem̃t in le countie ou le Robberie fuit fait; car est felonie in toutz les counties ou les biens sont portz (car felonie ne deuest propertie) mes nest robberie (que couient estre fait al person dun hõe) mes solem̃t in le countie ou le robberie fuit fait. Vide 4.H.7.5.b. 29.H.8.39. 40.Dier 11.H.4.93. Vide 3.Ed.3. tit̃ Ass.446. Jn Det, si home count dun lease pur ans in vn countie, de re in auk coũtie, il couient porter son action ou le lease fuit fait, & nemy ou le re gist; car laction est foundue sur le contract fait per le lease: 38.H.6.15. accord̃ per Cur̃. 8.H.6.23. acc'. Vide 4.H.6.18. 14.E.4.3. 29.H.8.40.Dier. Et issint le ley bien explaine in case in q̃ sont va-

rieties des opinions in nostr̃ liures. Mes si lease soit fait in vn Countie, & le terre gist in auter, laction de Wast serra port ou le terr̃ gist, & nemy ou le lease fuit fait, coment q̃ le terme soit passe, car le tre & damages, ou damages solement pur le wast, que est local, serra recouer, 14.E.4.3. accord̃. Si home assume de curer vn in vn Countie, & misfait in auter Countie, le pl̃ ad election a porter son action in q̃l des Counties il voit: Et oue ceo accord̃ 11.R.2.tit̃ Action sur le case 37. Si home ne repaire wall in Esser, que il doit repaire, per que mon terre in Midd̃ est surrounde, ieo poy porter mon action in Esser, car la est le default del def. come est adiudge in 7.H.4.8. ou ieo poy auer ceo in Midd̃, car la ieo aye le damage, come est pue per 11.R.2.tit̃ Action sur le case 36. Jsint si vn forge vn Chr̃e in vn Countie, & pclaime ceo in auter, le pl̃ poit eslier in quel Countie il voit porter son action, 29.H.8.38. Vide 22.H.6.5. Mes quant le defendant sur son pleder de rien culpabl̃ serra pr̃iudice in son triall, la le plaintife nad election a porter son br̃e in quel Countie que il voit. Vide 29.H.8. Dier fol.38. ou Gawyn sua appeal de Robberie in le Countie de Wiltes. ou le robberie fuit fait, enus Hussey & Gibs come accessories, et count q̃ les principals, nosmes in le br̃e, & q̃ fuer̃ attaint, font le robberie in Com̃ Wiltes. & q̃ les def. feloniousm̃t al Londres, deuãt le robberie fait, abbetr̃ eux a faire ceo: & fuit adiudge, q̃ com̃t q̃ le pl̃ ne poit aũ forsq; vn appeal vs le principall & accessories, & vers le principall ceo de necessitie couiẽt este port in Com̃ Wiltes. vn̄, pur ceo q̃ ceux de Com̃ Wilt. sur rien culp̃ plede, & Londres ne poyent ioyner, & ceux de Wilt. ne poient inqrer de chose in Lõdres, com̃t q̃ soit chose transitorie (car in case de felonie q̃ cõcerne le vie de hõe, chescũ act ꝑa trie in le ꝓper Countie ou le act fuit fait in verity) lappeal vers lez dits accessories abate: vide 43.E.3.17.18.19. Et est destre obꝫue, q̃ in touts actions reals, si alcun illue surd̃ sur le terr̃, ou in alcun action, in q̃ possession del terre, ou chose locall, ou que surd̃ sur le terr̃ per reason de ceo, est dãe recouer, touts ceux terr̃ port in le Countie ou le terr̃ gist: Come in br̃e de Droit de gard del terre, ou br̃e de Intrusion de gard, ceux terr̃ port in le Countie ou le terr̃ gist, com̃t q̃ le refusel fuit, ou le seigniorie loyt in auter Countie, 29.E.3.3.38.H.6.14. & 22.R.2.tit̃ Br̃e 937. accõrd̃. Jsint in br̃e de Dr̃t de gard pur le corps tantũ, ceo serra port in le Countie ou le terr̃ est, car ceo est in le droit, & sauor del terre, 21.E.3.42. & 30.E.3.25. 9.E.3.12.13. 10.E.3.7. accord̃. & le reason de 40.E.3.6. accord̃ oue ceo, coment q̃ le Judgem̃t est mention la deste done al contr̃. Mes br̃e de Rauishm̃t de gard ꝑa port ou le rauishm̃t fuit, & nemy ou le tre est, ou lou le corps est carrie; car

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ceo eſt foundue ſur le tauſhment, 38.H.6.14. 22.R.2.tit Briefe 937. & 12.Eliz.289.Dier. Et briefe de forfeit de mariage ſerr̄ port ou le terre eſt, car le briefe ſuppoſe vn intruſion in la terre: & one ceo accord̄ le dit liure in 12.R.2.& 38.H.6.15. Et briefe de valore maritagij ſerr̄ port ou la terre eſt, car le ſeignior ne deloigne de faire al-cun tender, mes il fait tender & lauter refuſe, & il ceo alledge in le countie, donques briefe de valore maritagij gilt in le countie ou le refuſall fuit, 22.R.2.tit Briefe 937. 38.H.6.15. Briefes de Quare impedit & Quare incumbrauit ſerr̄ touts foits ports ou leſglíſe eſt: car p̄ lun le pl̄ recouer ſon preſentm̄t, & p̄ lauter le clerke leueſque ſerr̄ remoue & le clerke le pl̄ admitt, 38.H.6.14.& 15. accord̄: vide 4. Ed.3.9. auterm̄t eſt in le caſe del Roy. Mes Quare non admiſit ſerr̄ port in le coūty ou le refuſel fuit, & nēy in le coūtie ou le eſglíſe fuit: car damages ſolem̄t ſont deſtre recouer, & le refuſall eſt le com-mencem̄t del tort & le ground del action: & iſſint eſt le liure ad-iudge in 38.H.6.14.& 15.F.N.B.47.b. Et Quare impedit dun p̄bend ſerr̄ port in le countie ou le Cathedrall eſglíſe eſt, & nemy in le countie ou le corps de p̄bend eſt, car le clerke de pl̄ eſt deſtre in-duct & inſtall in le Cathedrall eſglíſe: et one ceo accord̄ 21.Ed.3. 5.& Dier 2.Eliz.194 mes 43.E.3.24.& 15.E.3.Bre 325.ſemble al cōtr̄: vide 24.E.3.37. Et iſſint le ley bien explaine, in vn caſe in que fuit diuerſitie des opinions in n̄re liures. Et ſi home al common ley ad rent iſſuant hors de deux counties, il ne poit auer eſwe Aſſiſe in vn countie, pur ceo q̄ cheſcun part del terre in les deux coun-ties eſt charge one le rent, & tout ſerr̄ miſe in vieu, come eſt agree 18.Ed.2.tit Aſſiſ.380. 18.Ed.3.32. 10.Ed.3.21. 10.Aſſiſ.pl.4. & 18. Aſſiſ.pl.1. mes ſi home fait leaſe pur auter vie del terre in deux counties, renō rent, & le rent eſt arere, & ceſtuy q̄ vie deuie, ie leſſor auera action de det in quel des counties il voet, car ore ceo eſt chaunge in debt: & in ceſt caſe nul terre ſerr̄ miſe in vieu, mes le plon del debtor ſerr̄ ſolement charge per le common ley. Iſſint ſi rent ſoit iſſuant hors del terre de B. in deux coūties, & le rent ē a-rere, & ceſtuy q̄ ad le rent morust, ſes executors poient aū actiō de det vers B. in q̄l des counties ils voilont, ſur leſtat de 32.H.8.cap. 37. car coment & il couient porter laction in lun des counties, vn-core al common ley le perſon le defendant eſt charge in laction de det, & nemy le terre. Et deuant le ſtatute de 6.R.2.cap.2. briefe de det & ac coūt vers rereiuor, & autiels actions, poient eſtre port in tiel countie ou le partie poit eſtre mieulx ameſne eins a re-ſponder, & le plaint̄ poet auer count dun contract ou reſceit &c. in aſcun aut̄ countie, quia debitum & contractus &c. ſunt nullius loci: vide pur ceo 2. Edw. 3. 44. 6.Edw.3. 266. & 275. 8.Edw.3.380.

10.E.3.7. 19.E.3.Iurisd' 29. 29.E.3.26. 33.E.3.tit Iurisd' 57. 40.E.3.7. 3.H.6.30. 15.E.4.19. 21.E.4.88. Come in 22.H.6.9.& 10. ou le Roy grant office de surueyor del packing de touts manner de drapes deins London ⁊ les liberties de ceo, q̃ sont in 2. cõnties, ⁊ lass. fuit port in Midd: ⁊ la Newton & Paston disoient, q̃ est graund diuersitie ꝑenter assise de rent ⁊ cest assise; car ou rent charge est issuant hors de terres in diuers counties, chescun ꝑcell est charge oue tout, ⁊ couient q̃ touts les ten̄ del terre sont nosme, mes icy le ꝑson est charge ⁊ nemy le terre, vncore loffice pur q̃ lassise fuit port extend in deux counties. Et si fine ou feoffement soit fait de terres in deux counties oue garr̄, le Warrant' Chartæ poet estr̄ port in ascun des counties, 29.E.3.3. Est puruieu ꝑ lestatute de 7.R.2. cap.10. q̃ Assise de nouel disseisin serr̄ desormes grant ⁊ fait de rent arere, due des tenem̄ts in plusors counties, destre tenus in les confines des counties, ⁊ sur ceo lassise serr̄ prise ⁊ trie ꝑ gents de mesm̄ les counties, in mesm̄ le manner ⁊ forme come est fait dun cõmon de pasture in vn countie, append̄ aux ten̄ts in aut̄ county: car, al cõmon ley, si home ad ewe cõmon in terr̄ in vn countie, appendant ou apꝑtenãt al terre in auter countie, il auera deux seuerall briefes al vic̄ des seuerall counties: ou si le terre a q̃ ⁊c. gist in vn countie, ⁊ les terres in q̃ ⁊c. gisont in seuerall counties, la il auera vn brief de Assise al vic̄ del countie ou le terre a q̃ ⁊c. gist, ⁊ seuerall briefes al vic̄ des counties ou les terres in q̃ ⁊c. gisont: et tout ceo appiert in le Register ⁊ F.N.B.180.a. Et mesme la ley est, quant nusance est fait in vn countie, ⁊ le terre a q̃ ⁊c. est in auter countie, come appiert auxy in le Register ⁊ F.N.B.183.k. Issint q̃ si home ad rent in 3. ou 4. counties, semble q̃ cestuy q̃ est disseisie poet auer seuerall Assises destre prise in confinio comitatuũ: car le letter del statute de 7.R.2. est generall, de rent due des tenem̄ts in plusors counties: et com̄t q̃ ceo ad vn reference al case de cõmon de pasture ⁊c. vncore, intant q̃ in case de common de pasture si le terre in q̃ ⁊c. gist in diuers counties, ⁊ la terre a q̃ ⁊c. gist in auter countie, la serr̄ tants des briefes come sont seuerall counties; de ceo insuist q̃ tiel remedie auera cestuy q̃ ad rent issuant des tr̄ez in plusors counties. Auxy le case del common est mise exempli gratia & similitudinariè, & nullum simile quatuor pedibus currit: et nest necessarie, q̃ vn simile accord̄ in touts points. Et lestatute de 7.R.2. fuit fait pur satisfier vn doubt que fuit conceiue deuant; car ꝑ ceo est puruieu, que briefes in tiel case serr̄ faitz in le Chauncerie, sauns ascun manner de contradiction, cybien des disseisins deuant faits, come in apres destre fait: ⁊ le doubt fuit sur lestatute de Magna Charta cap.12. Recognitiones de noua disseisina,

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& de morte anteceſſor̃ non capiant̃ niſi in ſuis comitatibus: Et a trunz teigne, que ceo ne fuit obſerue q̃n lez Juſtices de aſſ. ſeont in confinio comitatuum, & noſmement quant ſont xx. counties meſne ink les deux counties, come le liure eſt in 5.E.4.fol.2. Mes ceſt doubt poit eſtr̃ auxy conceiue ſur le dit Aſſ. de nouel diſſ. de common, q̃n la tr̃e in q̃ &c. eſt in vn Countie, & la tr̃e a q̃ &c. in autre countie (quel caſe ſans queſtion neſt paſſe reſtraine per le dit Stat̃: Car Aſſiſe de no. diſſ. giſt de common de paſture al common ley, come p leſtat̃ de W.2.ca. 29. appiert) Vid' 10.E.3.21.& 10:Aſſ.p.4. Et ſi beſoigne fuit, leſtatute de W.2.ca.28. extend al dit caſe del Rent, p q̃ eſt puruieu, Quod quotieſcunq; de cætero euenerit in Cancellaria, qd̃ in vno caſu re. pit̃ br̃e, & in conſimili caſu, cadente ſub eodem iure, & ſimili indigente remedio, non re. pit̃, concordent clerici in Cancellaria in breui faciendo &c. vel ad proximum parliamentum de conſenſu Iuriſperitorum fiat br̃e: et leſtatute conclude oue leffect dun maxime del Common ley, Quod Curia dñi Regis non debet deficere cõquerentibus in juſtitia pquirenda. Vide 38.E.3.13. ou le caſe fuit, q̃ le roy poyt br̃e de droit de la quart pt des diſmez & offerings de Eſgliſe de S. Dunſtone in le Weſt, in Fleetſtreet, in le Suburbs de Lõdres, enuers le Priour de S. Johns de Jeruſalem in Engliterre: la Candiſh priſt exception al br̃e, pur ceo q̃ conũt q̃ ceſt br̃e ẽdone per leſtatute de W.2.cap.5.verſ.finem, & Artic.Cleri ca.2. q̃r ſtat̃ done, que il aũa br̃e Ad petendum aduocationem decimarum petitaꝝ &c. & ceſt br̃e eſt conceiue de la quart pt des diſmes & offerings, le q̃l nẽ my garr̃ per leſtatutes, iudgemt̃ de br̃e, intant que leſtatutes ne done br̃e de la quart pt des diſmes: Thorpe le chiefe Juſtice, que dõe le rule, dit, conũt q̃ leſtat̃ ne limit p exp̃ſſe pols, forſq; dez diſmez, vncore ceux in le Chauncery poient faire br̃e in conſimili caſu, & le br̃e eſt aſſets bone, p q̃ rñdez. Et in 18.E.2.tit̃ Br̃e 827. br̃e dentr̃ fuit port in le Countie de Suff. le tenũt plead releaſe del aunc̃ le pl̃ oue garr̃, q̃ fuit dedit, & troue pur le pl̃ in Loundres per Jurie de Friday ſtreet, &c. p que le dõt recoũ, & le tenũt port attaint, & la exception fuit priſe, pur ceo q̃ in le br̃e neſt compriſe dattacher le partie, iudgement &c. & pur le pl̃ fuit dit, q̃ br̃e fuit grant al vic̃ de Lõdres de ſommoner les xxiiij. & dattacher les xij. et auꝰ br̃e al vic̃ de Suff. dattacher le ptie ou le tr̃e fuit, & lun br̃e et lauꝰ fuer̃ lyes in Court: a q̃ fuit dit, q̃ fuit nul ley ſpecial, q̃ mainteinera ceſt br̃e q̃ eſt hors de common courſe. Beresford le chiefe Juſtice del banke, q̃ done le rule, dit, In nouel caſe nouel remedie &c. p q̃ rñdeg. Et pur ceo ſi ſoit Sñr & tenũt, & le tenancie extend in ij. counties, in ceſt caſe ſi les rents & ſeruices ſont arere, le Sñr poit aũ ſeuerall br̃es des cuſtomes & ſeruices, pur cheſcun Countie vn br̃e, & auer̃

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eux returnable a vn iour in le Common banke, & donq̃s de count̃ sur eux com̃ son case est, quia alitèr curia Regis deficeret conquerentibus in iustitia perquirenda: et one ceo accord̃ F.N.B. 151.b.& 30.E.1. tit̃ Droit pl. vltimo. Et ceo est bone exampl̃ pro quolibet consimili casu &c. simili indigente remedio. Vide 12.E.1. tit̃ Attaint 71. fort bone case: & le reason & rule del liure in 21.E.3. fol. 18. est destr̃ obserue, ou le case fuit, que fine fuit leuie dun Manor in vn countie, & le tenãcie gist in auter countie, ore, ou le p q̃ seruitia serra port, fuit le question: & fuit adiudge, q̃ ceo fuit bñ port in le count̃ ou le Mannor fuit: Car la Stone pronounce le rule del court in ceux parolx, il ne poit nul aut̃ bre añ, car il couient, q̃ son bre soit accord̃ a le fine, et port in le countie ou le note est leuie. Vide 11.R.2. tit̃ Action sur le case 36. 7.H.4.8. Vide 26.H.6. tit̃ Couenant 9. 41.Ass. pl. 12. 9.H.5. 6. 22.H.6.5. Et in le principall case, ou fuit obiect q̃ le dit Cap̃ Vtlagat̃ fuit erronious, car ceo fuit proxim̃ ante festum &c. ou serr̃ post festum &c. le Court ne prist ascun regard a ceo, car le error in le br̃ q̃ le def. m̃ ad torciousm̃t pursue ne donet̃ aduãtage a luy mesm̃: mes intant q̃ il fuit imprison & molest p c̃, ceo dõe cause dacc̃ al pl̃. Auxy le Court ne respect le clause, q̃ le def. al W. in com̃ Norff. &c. malitiosè & deceptiuè machinatus fuit &c. Car ceo est cy secret et cy incertaine q̃ ceo ne poit estre trie.

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Sir Miles Corbets case.

Inter Sir Ed. Clere & Miles Corbet adonqs armig ore chiual fuit resolue in vn case concernãt le plonage de Marham in le Countie de Norff. q ou in le pays de Norff. la est vn speciall manner de common appel Shacke, q est deste prise in tre arable, aps haruest iesqz le tre soit seme arere &c. & ceo commence in auncient tẽps in cest maner. Lez camps de arable tre in cest pays consist de terres de mults & diuers seueral plonz gisants intermixt in mults & seũal petit pcels, issint q nest possibl q alcũ de eux sanz trãs al auks, poit pascer lour auers in lour tre demesne, & pur ceo chescun de eux mitte eins lour auers a pascer, pmiscuè in le ouert cãpe: & ceux poix, daler Shack, sont tant a dire cõe daler a libertie, ou daler a large: in q le policie dauncient tẽps est deste obsue q le seuerance des campes in cy petit pcels a tants des seuerall plons, fuit dauoider inclosure & a mainteiner agriculture. Mes est deste obserue, que le dit common appel Shacke, que al commencement fuit forsqz in nature dũ feeding pur cause de vicinage pur auoiding de suit, in alcũ lieus deins cest pays est p custome alter in nature dũ cõmon append ou appurtenãt, et in alcũ lieus ceo retaine son oriqinal natur, & le rule de scaũ ceo est le custom & vsage de chescũ seũal vill, ou lieu, car consuetudo loci est obseruãd: & pur ceo, si in le ville de Dale (exempli gratia) vn q ad acquir diũs pcels ensembl, in qux lez inhab. ont vse daũ Shacke. & long tẽpz paz ad inclose cẽ, & niẽt obstãt toutz foitz aps haruest lez inhab. õt ew shack la p passãg in cẽ p barres ou gates oue lour aũs, la cẽ sra prisz cõe cõmõ appẽd ou appurtenãt, & lowñ ne poit exclud eux de cõmõ la, niẽt obstãt q il ne voit cõmoñ oue eux, mez a teñ sez, pper trez isslint inclose in seũalty; & cẽ est bñ pue p le vsag, car niẽt obstãt launciẽt incloslr, lez inhab. ont ew cõmõ la: mes si in le ville de S. le custome & vsage ont eẽ, q chescũ owñ in m le ville ad inclose

lour

lour, per terre de temps in temps, & illint ad teigne ceo in seue-raltie, la cest vsage, pue, q̃ ceo ne fuit forsq̃ in natur̃ del Shacke originalm̃t pur cause de vicinage, & illint ceo continue, & pur ceo la il poit incloſ & teigne ceo iñ señaltie, & secluder luy meſme dauer Shacke oue les auters: & com̃t q̃ in le dit case del ville de D. le vsage ad este, q̃ nient obstant le inclosure per diuers Inhabitants de tardife tẽps, les auters Inhabitants ont ewe Shacke la, vncore si vn home ad auncient close dauncient temps prise hors del campe, & il & touts ceux q̃ estate il ad, ad teigne ceo toutz foits in señaltie, il bien poit tener ceo incloſe, car quant a tiel peel illint auncientm̃t incloſe, le Shacke la reteigner̃ son auncient & originall nature, & cesty q̃ claime Shacke la, ne poit prescribe dauer common in ceo. Nota bone resolution, q̃ estoit oue reason, & nul inconuenience, innouation, ou cause de suits ou troubles sur ceo poit surder, mes quiet & repose serra per ceo in tiels cases establie, quel ieo pense digne destre repozt, pur ceo q̃ est vn generall case in le dit pais: & al primes le Court fuit tout ouster-ment misconusant del natur̃ de cẽ common appell' Shacke. Fuit auxy resolue a m̃ le temps, q̃ si les cõmons del ville de A. & del ville de B. sont adiacent, & q̃ lun doit aũ common oue lauf̃ p cauſ de vicinage, & deins le ville de A. sont 50. acres de common, & in le vill' de B. sont 100. acres de common, in cest case les inhabitants del ville de A. ne poient mitt̃ pluſors aũs in lour common de 50. acres q̃ c̃ voit depastur̃ sans aſcun respect al commõ deins le vill' de B. nec e conuerſo: car le originall cause de celt̃ common p cause de vicinage, ne fuit pur profit, mez pur preuenting de suitz in paiz champian, pur recipzocall escapes de lun ville in lauf̃: & pur ceo si le common del ville de A. voit depastur̃ 50. aũs, et del ville de B. 100. aũs, nest preiudice a lun ou lauf̃, si les aũs de lun ville escape & depasture in le common del auf̃ ville recipzocalm̃t, car si touts les auers depasture promiſcuè insemble per my & per tout, ne serr̃ aſcun preiudice a lun ou lauter.

Cases

Caſes ſur leſtatute de 13. Ed. 1. *de Wincheſter.*

LE puruiew del dit Act eſt, Que deſormes cheſcun pais ſerr̃ iſſint gard̃, que maintenant aps Robberies & Felonies faits, ſoit fait freſh ſuit de ville in ville, & de pais in pais &c. & aꝑz le felony ou robberie fait, le pais naña pluis longe time q̃ 40. iours, deins q̃ux 40. iours couiendr̃ q̃ ils facẽt gree de la robberie, ou del miſſait, ou que ilz rẽdzont del cozps des miſſefozs: ſ q̃ux pols diũs reſolutiõs ont eſte fait.

Trin' 27. Eliz.

TRiñ 27. Eliz. fuit tenus per totã cur̃ in cõi banco, in vn caſe que happa in Harleſton in le Countie de Suff. Que ſi home ſoit robbe in ſon meaſon, ſoit ceo in le iour, ou in le nuit, le Hundzed in q̃ le meaſon eſt ne ſerr̃ charge oue ceo: car com̃t q̃ le lr̃e del dit act ſoit geñal, ſans pler daſcũ lieu in ſpeciall, vné tiel robberie nẽ pas deins le dit act pur 3. reaſons. 1. Pur ceo q̃ le meaſon de cheſcun eſt ſon caſtle, & il doit garõ & defendõ č a ſon pil, & ſi aſcũ ſoit robbe in ſon meaſon, ſ̃ra arrette a ſon negligence & default demeſne. 2. Ne liſt al aſcũ auk̃ de enk̃ in le meaſon daſcũ pur le ſafegard̃ de č. 3. Tiel robberie, pur q̃ Hundzed rẽdr̃ p fozce del dit Act, couient eẽ apertm̃t fait, iſſint q̃ le pays poit p̃ndr̃ notice de ceo de eux m̃ (car fuit adiudge in Aſhpoles caſe ꝑchein enluãt, q̃ ne beſoigñ daũ aſcũ hue & crie, ou notice fait al pais, neqz p le lr̃e del dit act de 13. E. 1. neqz p le meaning de ceo, car poit eẽ, q̃ le ptie robbe fuit boũd, ou maihem, &c. iſſint q̃ il ne poit fair̃ hue & crie, ou doñ notice al pais) mes q̃t le robberie eſt ſecretm̃t fait in vn meaſon, ils ne poiẽt pzender notice de ceo. Sendils caſe.

Triñ 28. Eliz. in Cõi banco. Rott' 725.

INter Aſhpole & le Inhabitants de Euenger fuit reſolue per tout le Court, que coment que leſtatute eſt generall, & ne fait mention daſcun temps, que le Robberie conient eſte fait in Aſhpoles caſe.

le

le temps del iour, & hors del nuit: et la le case fuit, Que vn Robberie fuit fait in Januarie maintenant apres le coucher del soliel durant day light, et fuit adiudge, q̃ le Hundred respondera, pur ce q̃ fuit temps conuenient pur homes a trauailer, ou destre entour lour oures, ou businesse: Et oue ceo accord̃ le liure in 3. E. 3. tit̃ Corone 293. que si vn occist auter al heure del vesper, et escape, p le cõmon ley le ville serra amercie, car ceo est account en ley parcel del iour, & nemy del nuit.

Trinitat' 29. Elizab in Communi banco, Rott' 1027.

Milbornes case.

INter Milborne, & les Inhabitants del Hundred de Dunmow in Esser, fuit adiudge, q̃ pur robberie fait in le matine ante luc̃, le Hundred ne serr̃ charge, pur ceo q̃ le robberie fuit fait in le nuit: & com̃t q̃ nul temps soit specifie in lestatute, vn̄ p boñ exposition ceo nextend̃ al robberie fait in le nuit, car nul laches ou negligenc̃ poit este arrect al Hundred pur default de bone garder de pais in le mut, auxy in le nuit ils ne poiẽt faire pursuit apres lez offendors, ou inquirie pur eux, & donqs a charger eux qñt ils sont depriue de lour conuenient meanes, serr̃ fort dure. Et (cõe ad este souent foit dit aylors) est bone exposition dun statute a expounder ceo solonque le reason del common ley; Et al common ley, si vn soit occist in vn ville p le iour, cest a scauoir, cy longe cõe la ẽ pleine daylight, & cesty q̃ luy occist escape, le ville ou cest felonie fuit fait serr̃ amcy pur ceo: et issint est ten⁹ in 21. E. 3. tit̃ Corone 238. Dum quis felonicè occisus fuit p diem, nisi felo captus fuit, tota villata illa oneretur: & oue ceo auxy accord̃ le dit liure in 3. E. 3. Mes si tiel murder ou homicide fuit fait in le nuit, le vill̃ ne serr̃ amercie p le common ley, pur ceo q̃ (come ad estre dit) nul laches ou negligence poit este arrect al inhabitants del ville: & Dieu ad ordaine le iour pur homes a labourer, trauailer, & a faire lour besoignes, & le nuit a prend̃ lour rest & repose, & pur ceo le Prophet dit, Posuisti tenebras, & facta est nox, in qua pertranseunt bestiæ siluæ &c. sol oritur & congregaũ sunt, exit homo ad opus & operationem, & redit vespere: issint sauage beasts passont & repassont in le nuit, et adonques homes ont lour repose, & in le iour homes appliont eux mesmez a lour labours et affaires, et donques les dits beasts retire eux mesm̃ a lour dens. Et le Poet dit,

Psal. 104.

Vt iugulent homines surgunt de nocte latrones.

Et

Et le cõmon ley est, homes ne poient distreine pur rent ou seruice in le nuit, cõe ẽ adiudge in 12. E. 3. tit̃ Distresse 17. & 11. H. 7. 5. accord̃, mes pur damage fesant il poit distreine in le nuit, pur le necessitie del case, car autermt̃ paduẽture il ne distreinet̃ omnino, car deuãt le iour ils poient este prise, ou estray hors de son terre: & oue ceo accord̃ 10. E. 3. fol. 21. Est ouster puruiew per le dit act de Wintoñ, q̃ in Cities ou graund villes, q̃ sont inclose, les ports doient este firme del soliel couchant ies̃ al soliel leuant; puis quel Statut, si in tiel Citie ou ville inclose alcun murdre ou manslaughter soit fait in le iour ou in le nuite, & le offendor escape, tiel Citie ou ville ßra amercie: car ore lact ad change le reason del ley, & p ceo le ley mesm̃ est chaunge, car, Ratio legis est anima legis, & mutata legis ratione, mutatur & Lex; car al cõmon ley, si home fuit occise in le nuite, cõe ad este dit, la ne fuit alcun default in le Citie ou ville, mes ore ils ne gardont lour ports firme solonq̃ lestatute, p q̃ le offendor escape, donq̃s est default et negligence in eux; & oue ceo accord̃ le liure in 3. E. 3. tit̃ Corone 299. ou le case est, plent̃ fuit, q̃ vn occide auter in le nuite, & demaund̃ fuit ou le felon fuit, & ils disoyent q̃ il est fue, & pur ceo q̃ il fuit in le nuite il ne doit este charge. Lowther Justic̃, q̃ done le rule, dit le ville serra firm̃ p lestatute de cel heure, & pur ceo q̃ les villours de la ville ne luy prist point, tout le ville fuit in le mercie. Auxy fuit tenus sur le dit act de 13. E. 1. q̃ si diuis cõmit vn Robery, ceux del hũdred couiẽt apphend̃ touts le felõs, car cõm̃t q̃ ils apprehendont alcun de eux, ceo ne sufficer̃ dexcuser eux: car les pols del act de 13. E. 1. sont, q̃ ils respond̃ pur le corps de les offendors, q̃ in cõstruc̃ fuit prise touts les offendors. Mes ore p le statute de 27. Eliz. cap. 13. nouel ley est fait int̃ auts in ceux points ensuants. ¶ 1. Que nul aña acer̃ sur le dit statute, sinon q̃ le ptie robbe cy toft cõe il poit doner̃ notice del dit felonie al ascũ des inhabitants dascũ ville, village, ou hamlet, pchein al lieu ou le robberie fuit fait. ¶ 2. Sils in lour pursuit apprehend alcun des offendors, ceo eux excuser̃, cõm̃t que ils ne prendront touts. Vide le dit act de 27. Eliz. que auoit adde al dit act de Wintoñ, et alter ceo in diuers points.

Mich. 28. & 29. Eliz.

Le Countee de Bedfords case.

IN le Court de Gards le case fuit; q̄ Fraunces Countee de Bedf. estēt seisie de certain meales in le Strond in le coūty de Midd̄ in taile, s. a luy & a les heirs de son corps (& seisie dauters terres in fee tenus in capite) per fait indent, fist leases de m̄ les meales dōt il fuit seisie in taile pur 21. anz, rend̄ rent (queux leases ne fueront garrant p̄ lestatute de 32. H. 8. mes fuer̄ voidable per les issues in taile) & mozust, le reuerſion discend̄ a les heires generall del dit Countee, cestascauoir, a deux files & heirs del Henrie seignior Russel, eygne fits del dit countee (que Henrie mozust in le vie son pier) & appiert que les dits leases fuer̄ dauer continuance apres que les dits files serr̄ hozs de gard: & per office, puis le mozt del dit Countee, fuit troue, que il mozust seisie del dit estate taile des dits meales, & q̄ eux discend̄ al dits heires generall; per force de que les meales fuer̄ seisie in le maines le Roigne. Et in cest case deux points fuer̄ resolue. ¶ 1. Que le Roy in p̄uitie & droit des heires in taile auoidra les dits leases durant le temps q̄ ils ſſ̄ in gard̄: cōe si eueſq̄ fait lease pur ans nient garrant per le dit statt, illint q̄ le lease est voidabl̄ p̄ le succeſſ. & mozust, le Roy auoid̄ le leas, durāt le vacaē del eueſq̄, in p̄uity & dr̄t del eueſq̄rie, car le Roy in nul des dits cases est cōe vn estraūg̃. Et m̄ la ley est, q̄n̄t vn ſubiect est gardein in chiualr̄, il in le dr̄t del hr̄e, deins age et in son gard̄, auoider̄ voidable leases, q̄n̄t a son interest demesn̄; mes ceo ne p̄iudicer̄ le hr̄e de son election al pleine age, car Custos statū hæred̄ in custodia ſua existentis, meliorē non deteriorē facere potest. Illint, si le heire deins age deuant lētr̄ del gardein, ou laūcester, estēant deins age, fait leas pur ans rend̄ rēt, le gardein poit enter in le dr̄t del heire, & auoider̄ le leas. Mes sr̄ior p̄ escheat ne auoidr̄ voidable estates fait p̄ son tenant q̄ fuit enfant; car regularm̄t, nul auoidera voidable estates pur cause de infancie, sinon

lenfant

lenfant meſm̃, ou ſes heirs, mes le gardein auoidr̃ les dits voida-
ble leas in droit del infant meſme, & iſſint diuerſitie: & le Roy in le
caſe del Eueſq̃, auoidr̃ le leaſe, in droit del eueſq̃ry, q̃ ad continu-
ance com̃t q̃ le eueſq̃ ſoit mort. Et ceo fuit vn des points adiudg̃
in Leſchequer in le grand caſe int̃ Auſtine & Sir John Baker an̄
2. Mariæ, q̃l ieo aye vieu, & q̃ ſerr̃ relate pluis a large in le reſolution
del 2. point de ceſt caſe. Vide 16. Eliz. 337. Dier, patentee del roigne
Eliz. des trees dõe al p̃ſon, & ſes ſucceſſors a ſuſpicious vſes auoi-
dra ap̃s ſon mort leaſe pur vie (q̃ eſt voidable p̃ le ſucceſſor) fait p̃
le p̃ſon, p̃ le intention del ſtatute de 1. E. 6. de Chaunteries. Vide 7.
Eliz. Dier 239. Hoskins caſe. ¶ 2. Fuit reſolue, q̃ com̃t q̃ le Roy in
droit del heire ad auoide ceo pur ſon temps, vncore ceo ne auoyde
les leaſes, cy abſolement q̃ les hẽes in taile ap̃s lentereſt le Roy
determine ne poiẽt faire eux bone p̃ lacceptance del rent: car iact
le Roy ne poit determine le election & power des iſſues in taile, ou
del ſucceſſor del eueſq̃ in le caſe mis deuãt, a faire lez leaſes boñ p̃
lacceptance del rent. Et q̃m voidable leaſes, ẽeant void pur vn
temps, ſerr̃ touts foits auoiõ, & quant nemy, ceſt diuerſitie fuit
p̃iſe & reſolue p̃ le Court, ſ. q̃m lentereſt de ceſty q̃ fait lauoidanc̃
eſt forſq̃ pur pt del t̃me, iſſint q̃ appiert q̃ vn reſidue remaine; et
q̃m cẽy q̃ fait lauoidanc̃ auoid tout lentereſt iſſint q̃ appiert q̃ nul
reſidue poit remaine: & pur ceo in le caſe al barre appiert ap̃s
lentereſt le Roy determine, la remaine vn reſidue del terme: Mez
ſi le patron del eſgliſe de D. grant le p̃ochein auoidance al auc̃, &
puis & deuant leſtat de 13. le roigne Eliz. le p̃ſon, patron, & ordina-
rie font leaz pur ans renõ rẽt, et le p̃ſon mourſt, le graũtee p̃ſent,
q̃ eſt admit, inſtitute, & induct, & mourſt, ceſt leaz fuit auoid in tout
abſoluteñt; & pur ceo tiel leaſe ne poit eſtoier vers le 2. ſucceſſor. 2.
E. 3. 8. ſi aduowſon dun eſgliſe per licence ſoit grant al vn p̃ior et
ſes ſucceſſors, et puis m̃ leſgliſe ẽ appr̃opr̃ie a luy & ſez ſucceſſorz,
iſſint q̃ ils ſont ꝑpetual p̃ſons in p̃ſonee; in ceſt caſe ſi la feme del
graunt̃or ſoit indoow del aduowſon & p̃ſent vn Clerke, que eſt
admit, inſtitute, & induct, lappr̃opr̃iation eſt defeat a touts iours,
car lentier eſtat del parſon in parſonee eſt auoide, & iſſint fuit ad-
iudge come Sir Jeffrey Scrope repor̃t in 2. Ed. 3. fol. 8. et in tiel
ſence eſt le liure deſtre intend. Car coment que la feme fuit in-
dowe del aduowſon, vncore ſi el vſt deuie deuant que aſcun fuit
admit, et inſtitute a meſme leſgliſe a ſon p̃ſentation, leſgliſe re-
mainera ap̃p̃r̃iate: & iſſint vn Quære in 6. E. 6. fol. 72. Dier, eſt bi-
en reſolue. Iſſint, ſi feme couert (come feme ſole) leuie fine aper-
luy de terre dont el eſt ſeiſie in fee a vn auter & ſes heires, in ceſt

case si le baron ne enter, cest fine liera la feme et ses heires a touts iours, & in mesme le case si le baron enter & mozust, le conusee nauera la terre: car per lentrie del baron lentier estate del conusee fuit defeat, & launcient estate la feme revestue in luy, & le baron seisie del entier estate come in droit sa feme: et oue ceo accozd 17. Edw. 3. 52. 17. Ass. pla. 17. 7. H. 4. 23. 2. Rich. 3. 20. 9. H. 6. 33. Mes quant forsq; part del estate ou terme est defeat, la est auterment, com in le dit case inter Austine & Sir John Baker fuit adiudge, quel case, come ieo mesme ay veiu, in effect fuit. Sir Thomas Moyat fuit tenant in taile del manoz de Estfarleighe, in le countie de Kent, viz. a luy, & a les hes males de son corps, del done le Roy H. 8. a tener de luy in Capite, le reuersion al Roy, ses heires, & successoz. Sir Thomas Moyat, per Indenture demise le dit manoz al Austine, pur 26. ans, rendant 13. l. rent, al dit Sir Thom et ses heires, & puis Sir Thomas Moyat mozust, & tout ceo fuit troue per office, & que Sir Thomas Moyat fuit son fits & heire male de pleine age, per que le Roy ad primer seisin del terre mesme, & pur son interest auoide le lease, & puis Sir Thomas le fitz suist liuerie, & accept le rent del Austine, & puiz commit haut treason, pur q̄ il fuist attaint: in cest case fuit adiudge, que intant que le Roy ad auoid le lease forsq; quant a son primer seisin, q̄ aps liuerie fait, est in le election & power del issue in taile, per lacceptāce del rent, daffirmer le lease, pur ceo que le lease fuit auoide per le Roy forsq; pur part del terme. Jssint si tenant in tayle prist femm, & fait lease pur 30. ou 40. &c. ans, rendant rent, que est voydable per le heire in taile, & mozust, & puis le feme recouer sa dower, in cest case le feme auoidera le lease, & vncoze, si el mozust deins le terme, lissue in taile poit a son election ou affirmer ou disaffirmer le lease. Et fuit dit, si tenant in tayle fait lease pur 30. ou 40. ans, rendant rent, quel est auoidable per lissue in taile, & puis tenant in taile mozust sauns issue, son feme priuement inseint, oue vn fits, per que le donoz enter, & quant a luy auoide le lease, & puiz le fits est nee le lessee reenter, le fits a son pleine age poit p acceptance del rent affirme le leas; car le lease ne fuit vnqs auoid absolutem̄t, ne simplicit̄, mes secundū quid, & sur le matt̄ ex post facto fuit defeat forsq; pur temps: Et com̄t q̄ filius in vtero matris, est pars viscerum matris (Vide 3. Ass. pl. 2. 22. Ass. pl. 94. 22. Edwardi tertij, tit̄ Corone 180. Stamford fol. 21.) vncoze le ley in mults cases ad consideration de luy in respect del apparant expectation de son nestre, vide lopinion de Saunders & Browne in Stowels case, Plowd. com. fol. pur auoyding dun fine, Vide temps Ed. 1. tit̄ Gard 153.

& 31.

& 31.E.1.tit Briefe 873.pur le gard de luy. Vide 38.E.3.7. & 41.Ed.3. & 11.E.3.tit Voucher que il ſerra vouche in ventre ſa mere, 11.H.6.13. deuiſe de terre (deuiſable p cuſtome) a vn in ventre ſa mere, 41.Ed. 3. deteinñt des chẽes pur le heire in ventre ſa mere, 3.Eliz. Dyer 186. adulter counſel la feñ de murder lenfant quant eſt nee, q̃ fait accoꝛd̃, ladulter eſt acceſſary, vncoꝛe al temps del counſel lenfant fuit in ventre ſa mere. Mes fuit dit, ſi tenant in taile fiſt leaſe pur 30. ou 40. ans, renõ rent, & puis pꝛiſt feñ, & moꝛuſt ſans iſſue, ſa feñ pꝛiuenñt enſeint oue fitz, & puis la feme recoũ dower del dit terre, el deuant le neſtñ del fitz nauoidera le leaſe, car ſon eſtat̃ eſt quodam modo vn continuance del part del eſtate taile, & ceo eſt pue per 10.E.3.26. 34.Aſſ.p.15. & 23.E.3.Dower 130. q̃ il ſerr̃ attendant del 3.pt de ſeruices q̃ tenant in taile feſoit, les queux el ne ferr̃ ſi a touts purpoſes leſtate taile fuit tout ouſterñt extinct, et tenant in dower eſt eins in le Per, p ſon baron et eins de ſon eſtat̃. Vide Litt̃ 93.b.in Diſcents. 38.Aſſ.26. 7.H.5.3. 8.E.2. Entre 75. &c. Vide Dier 33.H.8.fol.51.b. tenant in taile deuant leſtatute de 27. H.8. de vſes fiſt feoffeñt in fee al vſe de luy & ſes heires, & auxy, deuant le dit act, il & ſes feoffees font leaſe pur ans, renõ rent, & puis leſtatute il moꝛuſt, le terre diſcend a ſon iſſue, q̃ deuant entrie ſur le termoꝛ leuy fine al auter: & p le melioꝛ opinion des Juſtices dambideux bankes p̃ter Saunders lalienee ne ceo auoidera; car conſt̃ q̃ le fitz fuit remit, vncoꝛe le leaſe ne fuit merement void ſans actuell entrie p liſſue. Vide Pl.com.437.

Trinit̃ 33. Elizab. in Communi *Banco.*

Vghtreds case.

HEnrie Vghtred armiger port briefe de annuitie vers Will' marques de Winchester fits et heire de John marques de Winchester, et counta comẽt le dit John marques de Winchest. 20. die Decemb. añ 17. Eliz. tam pro bona & fauorabili affectione & beneuolentia quas gessit erga eundem Henricum, quam pro confidentia & fidelitate reposit̃ in eodem Henrico, per son escript constitute et authorize le dit Henry destre captaine del fort ou bulwarke ⁊ castle de Netley, alias Letley, in Comitat̃ Southamptõ, a auer ⁊ exerciser le dit office del Captaine ⁊c. durant le vie del dit Henrie, ⁊ donoit a luy authoritie durant son vie a nominater ⁊ appointer de temps in temps vn master gunner, vn porter, ⁊ 6. souldiers ⁊c. Et ouster, ꝑ mesm̃ lescript, le dit John marques granta, pro consideratione prędicta, & pro meliore manutentione ipsius Henrici & magistri tormentor̃, & sex militum in defensione & tuitione castri prædicti, pur luy ⁊ ses heires al dit Henry, durant son vie vn annuitie de 32. l. al feasts de S. Michael ⁊ Lannunciation de nostre Dame, ꝑ equall portions: per force de quel il fuit seisie del dit office ⁊ del dit annuitie pur son vie: ⁊ puis 10. Nouembr̃ anñ 18. Eliz. le dit John marquesse morust, ⁊ le defend̃, son fits ⁊ heire, le dit annuitie, per 11. ans deuant le briefe purchase, subtrahe, q̃ in tout amount a 368. l. ⁊c. Sur quel count le defend̃ demurr̃ in ley, ⁊ solonq̃ lestatute mr̃e diuers causes: 1. pur ceo q̃ nappiert per le count que le dit John seignior marquesse ad power ou interest a granter le dit office, et auxy pur ceo que le pl' nad auerre q̃ il ad exercise le dit office, ne q̃ il appoint vn master gũner, porter, ou les souldiers, ⁊ diuers auters causes fuer̃ mr̃e: mes hijs non obstantibus iudgement fuit done ꝑ les Justices del Common banke pur le pl'. Sur que le seigniour marquesse port

briefe

briefe de Error, & diuers errors fuer aſſigne; mes touts fuer ouer-
rule p le court forſq; vn, & ceo fuit q̃ le pl̃ in le briefe de annuitie
nad auerre in ſon count, q̃ il auoit exercile le dit office &c. Mes a-
pres pluſors arguments & conſideration de touts les liures, in
queux (come ſemble prima facie) eſt diuerſitie des opiniõs, fuit re-
ſolue, q̃ le count fuit bone ſans tiel auerm̃t. Et lour reaſon fuit,
q̃ in touts caſes quant vn intereſt ou eſtate commence ſur condi-
tion precedent, ſoit le condition ou act deſtre perform̃e per le pl̃ ou
defend̃ ou p aſcun auter, & ſoit le condition in laffirmatiue ou ne-
gatiue, la le pl̃ couient a m̃re ceo in ſon count & auerre le perfor-
mance de ceo, car la lintereſt ou leſtate commence in luy per le p-
formance del condition, & neſt in luy tanq; le condition ſoit per-
form̃e: mes auterment eſt quant le intereſt ou eſtate paſſe main-
tenaunt et veſt in le grauntee, & eſt deſtre defeat p matter ex poſt
facto, ou condition ſubſequẽt, ſoit le condition ou act deſtre pform
p le pl̃ ou defend̃ ou p aſcun auter, & ſoit le condition in laffirma-
tiue ou negatiue, la le pl̃ poet counter generalm̃t ſans m̃rans del
perform̃ance de ceo, & ceo ſerra plead per ceſtuy que voet prender
aduantage del condition ou matter ex poſt facto, car chaſcun doit
alledge ceo que fait pur luy, & q̃ eſt pur ſon auaile, & nul ſerr̃ chaſe
dalledger ceo que fait inconꝰ luy. Et bien poet eſtre que le conditi-
on ſubſequent, ou matter ex poſt facto, eſtoit ſur mults parts
(come in le caſe al barre ceo happa) queux touts a rehearſer ſerra
tedious, quant iſſue ne ſerra priſe forſq; ſur vn de eux, & le def.
poet pleader quel vn de eux il pleiſt in barre del action; & iſſint le
pleading ſerra pluis briefe & compendious, que eſt le pluis com-
mendable, ſi ceo ſoit ſufficient. Icy in le caſe al barre le condi-
tion fuit deſtre perform̃e per le pl̃ meſme, & pur ceo le caſe eſt pluis
fort, mes pur ceo q̃ le pl̃, per le dit graunt, fuit maintenant ſeiſie
del office et del annuitie pur terme de ſon vie, le quel couiẽt eſtre
defeat per le non vſer del office ou auter matter ſubſequent, le
matter ſubſequent fait encounter luy, & pur ceo ſerra plead per le
defend̃: et oue ceo accord̃ 15.H.7.fol.1. in briefe de annuitie bers
ſucceſſor dun prior, ſur graunt fait per ſon predeceſſor tanq; il fu-
it aduance a vn benefice de S. eſgliſe, & le pl̃ count generalm̃t,
ſauns dire, q̃ il eſt vncore aduance: & exception fuit priſe a ceo
pur tiel cauſe, et nient obſtant le coũt agard bone, pur ceo q̃ le con-
dition va in defeaſance del annuitie, le quel viendra del part del
defend̃ deſtre m̃re: auxy, ceo eſt annuitie que commence auãt q̃ le
condition ſerra perform̃e, le quel perform̃ance viendra del part
del grantor, & nient ſemble ou le condition fuit, q̃ ſi le grantee face
tiel act que donques il auera tiel annuitie, ore ſil voet demaund
ceo,

ceo, il couient alledger in fait q̄ le condition est performe, car per le performaunce de ceo lannuitie commence: & issint diuersitie p omnes Iusticiarios, & ceux sont les parolx del liure. Issint est dit in Colthirsts case Pl.com.25.b. si ieo grant a vn q̄ quant il serra promote a vn benefice, q̄ il auer̄ annuity, sil demaund annuitie il doit primes mr̄e que il est promote a vn benefice: mes si lannuitie soit graunt a vn tanque il soit promote a vn benefice la il auera briefe de annuitie, & ne mr̄e q̄ vncore il nest promote, pur ceo q̄ lannuitie preceed, & le promotion est subsequent, & va in defeasaunce del annuitie; & pur ceo doit estre mr̄e del contrarie part. Mes quant home nest pas intitle forsq̄ a vn action, & cest action ne gist sinon le condition ou consideration soit performe, la le pl̄ in son count doit mr̄e le performance; car ceo amount a vn condition precedent, pur ceo que laction commence sur le condition ou consideration performe, come le liure est in 3.H.6.33.b. Mittomus que ieo retaine vn home dal̄ oue moy al Rome p̄ 40.s̄. icy, p le aler commence primerim̄t le cause del dutie, in quel case sil port briefe de det de cel, in son coūt il couient declare q̄ il fuit la, ou autrim̄t le count abatera. Issint est, si ieo retaine vn de seruer moy pur 40.s̄. per annum, car icy per le consideration performe cōmence le dutie, issint que ceo est in nature dun act precedent: & sic fuit opinion de tout le court in le dit liure. Mes le case in 48.E.3.3.& 4. fuit affirme pur bone ley, ou appiert q̄ indentures fuer̄ faits inr̄ Sir Rafe Poole chlr̄e de lun part, & Sir Rich. Tolcelser del auter part, per queux Sir Rafe couenant oue Sir Rich. de seruer luy oue 3. esquiers des armes in la guerre de Fraunce, & Sir Rich. couenant pur ceo a paier a luy 42. markes: in cest case chescun partie ad oswell remedie, lun pur le seruice, & lauter pur les deniers, & pur ceo, in det pur les 42. marks, il poit eslier de counr̄ in generall ou in special, a sa volunt, per le rule del court. Auxy quant vn interest passe maintenant & est destre defeat per matter ex post facto, vncore sil appiert al Court per matter in ley, que laction ne serra maintenable sans mr̄ans del performance del condition ou consideration, la le pl̄ couiēt dauerrer ceo pur maintenance de son action; come in 39.H.6.21.22. le case fuit, R. abbot de Chester grant a John Brewin ar̄ per son fait (sans le consent del couent) vn annuel rent de 40.s̄. hors de son monasterie pro cōsilio suo eidem R. abbati & conuentui eiusdem loci impenso, & imposterum impendend': le dit R. abbot morust, & John Brewin port briefe dannuitie vers le successor, & auerre, q̄ il auer done al dit R. nup abbati & conuentui consilium suum, apud W. in negotijs domus p̄dict̄ agendis, ad proficuum eiusdem domus: & Prisot & tout le court

Court tient, q̃ laction ne fuit maintenabl̃ vers le ſucceſſor ſauns tiel auerment; car laction neſt maintenable vers le ſucceſſor, de nul contract ou graunt fait p Labbot ſoleñt ſans le Couent, ſinon q̃ le effect ou conſideration de ceo vient al pfit del meaſon; & que tiel geñal auerreñt fuit bone, car ſerr̃ trope longe a mẽe touts lez cauſes ſpecialiñt, & pur ceo vers le ſucceſſor il doit prender tiel auerreñt: Mes in action vers Labbot m̃, que fiſt le graunt, ne beſoigne de p̃nder tiel auerreñt, come eſt agree la p tout le Court. Et iſſint p ceux diuerſities, 1. Inter intereſt ou eſtate veſt, & q̃ eſt deſt̃ deueſte p condition ou matt̃ ſubſequent, & conditiõ ou matter que p̃cede leſtate ou le intereſt, 2. Inter choſe in action q̃ in iudgement del ley eſt a commencer ſur condition ou conſideration precedent, & intereſts ou eſtates q̃ commence maintenant, 3. Quant owel remedie eſt done al ambideux, p recipr̃ocall couenants, 4. Quant per matter apparent laction le pl̃ ne ſerr̃ mainteine ſans auerrement, coñt q̃ ſoit in caſe dun eſtate ou intereſt veſte, vous mieulx entendrez vẽe liurez, q̃ ſemblont prima facie a diſcorder. 21. E. 4. 49. 22. E. 4. 43. 9. E. 4. 20. 37. H. 6. 8. 36. H. 6. 2. Dier 10. Eliz. 270. in Auowrie, & 15. Eliz. 329. in Dette.

Et nota, le dit Vghtred ad iudgeñt in le common Bank, Quod p̃dictus Henricus recuperet verſus p̃fatũ nunc Marchionem, annuum reddit̃ p̃dictum & arreragia eiuſdem, tam diu ante diem impetrationis br̃is original̃ ip̃ius Henrici, quam poſtea incurſa, & damna ſua occaſione ſubtractionis annui redditus p̃dict̃ ad decem libras, eidem Henrico ex aſſenſu ſuo per Curiam hic adiudicat̃: Quæ quidem arreragia & damna in toto ſe attingunt ad 402. libr̃. Et p̃dictus nunc Marchio in miſericordia.

Mich.

Mich. 33. & 34. Eliz. in Scaccario.

Englefields caſe.

INter le Roigne, & Margaret Engleſield, Fraunces Engleſield, & auters, in Inforꝛmation ſur intruſion in Leſchequer, q̃ cõmence Tr̃ 32. Eliz. le caſe fuit tiel in effect. Sir Frances Engleſield ſeiſie del manoꝛ de Engleſield in Com̃ Berk. in fee, per Indentur̃ dated 2. Ianuarij, añ 18. Eliz. inter luy & le dit Frances ſon Nephew, couenant pur aduancemẽt de ſon ſank &c. a eſtoier ſeiſie al vſe de luy meſme pur vie, & puis al vſe de ſon dit nephew, & les hẽes males de ſon coꝛps, et puis al vſe de dꝛoit hẽes del nephew: Et fuit ouſter conteine in le dit Indẽture, q̃ pur ceo q̃ ſon nephew fuit Infant, iſſint q̃ ſon pꝛoofe ne adonqs fuit viewe, & pur ceo le vncle ne penſa conuenient a ſetler le dit inheritance en le nephew abſolutemẽt, cy longement come le vncle viueroit, ſans frene pur reſtrainer luy, ſi aps il ſra ꝓdigall, ou ſerra done al intollerable vices; a ceſt cauſe fuit ꝓuide, q̃ ſi le vncle p luy meſm̃ ou per aſcun auter, durant ſon natural vie, deliuer, ou offer al nephew, vn annule del oꝛe, al intent de faire void les vſes, que donqs touts les vſes ſerr̃ voide. Hill 26. Eliz. Sir Fraunces fuit indict in banke le Roy, p enq̃ſt de Midd̃, pur Treaſon fait al Nemures in Hanonia in ꝓtibus tranſmarinis, 20. Octob. 18. Eliz. ſur q̃l indictm̃t il fuit btlage: et puis 8. Auguſti, 28. Eliz. le Roigne, per patent deſouth le graund ſeale, leſſa le terr̃ al Foſter & Fitton, deux de les def. pur 40. anꝛ, & auxy demiſa al eux pur 40. anꝛ, omnes & ſingulos boſcos, ſubboſcos, arbores, & terras boſcales: et puis al pliament 29. Octob. añ 28. Eliz. lattaindr̃ fuit confirme; & ouſtr̃ fuit enact, q̃ il ſerr̃ attaint de hault Treaſon, & foꝛfeiter̃ al Roigne touts ſes manoꝛs, terres, tenem̃ts, &c. le iour de le treaſon cõmis, ou a aſcun temps aps, & q̃ ſra in actuel poſſeſſion le Roigne ſans office: Mes ouſtr̃ fuit puruiew p m̃ le act, q̃ riens in ceo extenderoit a faire void aſcun leaſe de terre, ou done de biẽs, fait p le Roigne ſouth le grañd ſeale, ou Leſchequer ſeale, puis le treaſon fait &c. Et a m̃ le pliament vn auk act fuit fait, per q̃ fuit enact, That euerie perſon and perſons, which hath, or claimeth to haue any eſtate or intereſt, of, in, or out of any land of any of the perſons attainted ſince 13. Eliz. not inrol-

led

led of record, nor certified into the Exchequer, made ſince 1. Eliz. by any of the perſons attainted ſince 18. Eliz. of Treaſon, for conſpiring of the Queenes death (come le dit treaſon de Sir Fr. Engleſield fuit) within two yeares after the laſt day of this Seſſion of Parliament, ſhall openly ſhew, and bring forth, into the Queens Maieſties Courts of Exchequer, the ſame, his, or their graunt, conueiance, and aſſurance, and there in the Terme time, in open Court, the ſame ſhall offer and exhibit, or vpon his, or their othe, affirming that they haue not the ſame, nor can come by it, or that it was neuer put in writing, then the effect thereof to be entred and inrolled of record, Or elſe euerie ſuch conueiance and aſſurance ſhould be void and of none effect to all intents and purpoſes: Sauing to euerie perſon and perſons (other then parties and priuies to ſuch conueiance, and ſuch as ſhall not exhibit the ſaid conueiance according to the true meaning of this Act) all ſuch right, &c.) Et puis 17. Martij, 31. Eliz. le Roigne, per ſes lres patents deſouth le grād ſeale, recitant les vles, & le prouiſo del tendering dun anule, & que le benefit & aduantage del dit condition eſt done a luy per les ſtatutes de ceſt Realme, depute, authoriſe, & in ſon lieu & perſon ad mis Rich. Broughton & Henrie Bouchier iointment & ſeueralm̄t pur deliuer ou offer le annle de oze al Engleſield le Nephew, al intent de faire voide les vles in lendentures, & que ils certifier in Lexchequer ceo que ils fairont in les premiſſes. Broughton & Bouchier 18. Martij, añ 31. offer le anule (& lie a luy le patent) al dit Fraunces le nephew, quel il refuſa; tout quel fact oue le patent ils certifiont in Lexchequer 19. Martij 31. Et le vie de Sir Fraunces fuit auerre &c. Et les def. fuer̄ charge pur intruſion 20. Martij 31. Eliz. et oue le ſuccider de certaine trees de elme & aſhe, & de certeine ſubboyes. Et in ceſt apres plusors arguments al barre, et ſur ouert argument al bench, ceux pointz fuer̄ reſolue. 1. Le roigñ fuit tenant pur auē vie, & fiſt leas pur 40. ans, com̄t que le roigne (aiant forſq̄ eſtate pur auter vie) ne poit abſolutem̄t contracter pur leas pur 40. ans, vncore ſans aſcun recitall ou mention de eſtate pur vie, le leas eſt bone, car le leaz pur ans eſt in iudgement del ley meinder q̄ leas pur auter vie, & le Roigne ne fait aſcū tort ou p̄iudice a aſcū per le demiſe, & neſt deceiue in ſon graunt; car in iudgement del ley, ceo eſt leaz pur 40. anz, ſi ceſty q̄ vie cy longem̄t viuera: Mes ſi le Roigne vſt graunt greinder eſtate que el loyalm̄t poyt, come eſtate in taile, ou in fee, la pur ceo q̄ el ne poit loialm̄t ceo faire el fuit deceiue, & per cōſequēt ſon graunt void. Vide oze le caſe de Alton Woods, in le primer part de mes Reports. Et fuit dit, q̄ ſi le Roigñ grant totū ſtatū ſuū (ayant term̄ ou eſtate pur vie, extent, ou auter pticuler eſtate) q̄ ceo eſt aſſets bone, car le

Roigne

Roigne ne graunt pluis q̃ il poit ꝑ la ley, ne fait ascun tort ou alteration dascũ estate ꝑ sa graunt. Et fuit obiect, que cest condition ne serra done al Roigne per lestatute de 33.H.8. cap. 20 et ceo pur 3. reasons. ¶ 1. Cest condition est annexe al Sir Fraunces oue tiel inseperable priuitie, q̃ ne poit este done al auter: car in cest case le substance del condition est le entent ⁊ ment de Sir Fr. mes pur ceo q̃ son entent ⁊ ment ne poit appearer sans ouert act, a cest cause le anule serr̃ tender come declaration de son entent, q̃ fuit inward ⁊ secret a luy mesme; issint q̃ le tender del anule nest forsq̃ le outward ceremonie, mes le substance del condition est le ment ⁊ volunt de Sir Fraunces, que ne poit este transferr̃ al auter. Auxy in cest case nature est fait Judge, car le vncle est daiudger del qualitie ⁊ disposition del nephewe, ⁊ le quel il done cause a son vncle a reuoker ⁊ disannuller son estate, ⁊ pur ceo, sicõe natural amour ⁊ affection ne poit ẽe transferre al auter, issint cest conueiance, de q̃l natural amour ⁊ affection est le cause de creater de ceo, ⁊ le judge del determination de ceo, ne poit este reuoke ou determine ꝑ ascun auter, ⁊ tout ceo accord̃ oue le reason del common ley; Car le garde del eigne fitz, q̃ le ley de natur̃ done al pier, est inseꝑable, ⁊ ne poit este forfeit ne transferre al auter, come est agree in 33.H.6. ⁊ homage auncestrel est inseparabl̃, pur ceo que ceo est annexe al sanke del Sñr ⁊ del tenant. ¶ 2. Per generall parolx del dit act de 33.H.8. conditions seꝑable, ⁊ q̃ poyent este ꝑforme per auters, ⁊ nemy inseperable, sont done al Roy, come appiert per diũs cases foundus sur geñall acts de ꝑliaments icy mis, ⁊ agree ap̃s. ¶ 3. Fuit obiect, Que ceo esteant vn collateral condic̃, com̃t q̃ le cõdition soit done al Roy, s̃. le benefit de ceo, si ceo soit ꝑforme, vncor̃ le ꝑformance de ceo nest pas done al Roy ꝑ le dit act; ⁊ pur ceo Sir Fr. couient tender le anule, ⁊ nemy le Roigne. Et pur ceo, posito q̃ le condic̃ vst estre, si le chiefe Justice Dengleterre pur le tẽps esteant, tendra vn anule, ap̃z lattaindr̃ del Sir Fraunces, le Roigñ ne poit tender: ⁊ le reason de les liures in 12.H.4.2.& 9.H.7.17.& 20.4.H.8. Dyer 1.&c. fuit vrge, ou collateral conditions ne poiẽt estre alter, ⁊ auts choses accept in satisfaction de eux inter m̃ les ꝑties; à fortiori icy, car icy le ꝑson q̃ per exp̃sse ꝑolx doit ꝑformer le condic̃ ſra chaunge. Quant al 1. ⁊ 2. obiections, *Manwood* chiefe Baron, & tout le Court teignont, que tout le force ⁊ effect del condic̃ in le case al barr̃ consist sur le tender del anule, ⁊ lauter matter del reason ⁊ cause, que moue et induce luy de layser le dit power ⁊ frene in luy mesm̃, ne fuit ascun parcel del prouiso, mes vn florish, come il ceo terme, ⁊ preamble, ⁊ riens est parcell del condition, mes ceo que vyent apres le

ꝓuiso,

puiſo, & ceo eſt le tender del amule. Et quant a ceo, le dit diuerſitie fuit prile et agree per tout le Court, ſ. inter conditions que ſont perſonel, et indiuidual, & ne poyent eſte perfozme per aſcun auter, & conditions q̄ ne ſont cy inſeperablemt annexe al perſon, mes q̄ ils poyent eſte pfozme per aſcun auter; come fuit reſolue, in le caſe de Thomas Duke de Nozff. que in Anno 11. Eliz. conuey ſes terres al vſe de luy meſm̄ pur vie, et puis al oeps Philip Countee de Arundell ſon eygn̄ fitz in taile, oue diuers remainders ouſter, oue puiſo, que ſil ſerra minded de alter & reuoker les dits vſes, & ſignifiera ſon ment in eſcript deſouth ſon pzoper maine & ſeale, ſubſcribed per 3. credible witneſſes, que donques &c. et puis le dit Duke fuit attaint de hault Treaſon, que ceſt pzouiſo ou condition ne fuit done al Roygne per le dit act de 33. H. 8. pur ceo q̄ le perfozmāce de ceo fuit perſonel, & inſeperablemt annexe al pſon, ceſtaſcauoir, a ſignifier ſon ment per eſcript deſouth ſon pzoper maine, que nul auter poit faire, mes le Duke meſme; Sur q̄l point touts les poſſeſſions del Dukedome iſſint conuey vt ſupra, fueront ſaue, et nemy forfeit per lattainder. 53. H. 6. 56. Les Templers teignont diuers de lour poſſeſſions in frankalmoigne (quel tenure come Litt̄ dit, eſt annexe in pzuitie al ſanke le donoz) & puis ils fuer̄ diſſolues, & per parliament Añ 17. E. 2. lour poſſeſſions fuer̄ done al Hoſpitalers, a tener eux in meſm̄ le manner come les Templers teignont; vncor̄ ils p ceux geñal paroly ne teigneront in frankalmoigne, pur ceo q̄ le pzuitie del tenure dl pt le teñ ne continue, & ceſt pzuitie eſteant pſonel, & inſeperabl̄, per general paroly del act, ne fuit tranſferre al Hoſpitalers. Meſme le ley dun impzopziation dun Eſgliſe, que auxy eſt incident inſepable al meaſon de Religion a que leſgliſe eſt impzopziat: Et pur ceo eſt adiudge in P. 3. E. 3. que les Hoſpitalers p le dit act de 17. E. 2. naueront le impzopziation, car ceo fuit inſeperablemt annexe al cozpozation des Templers, quel choſe, conſiſtant in inſepable pzuitie, per general poly dun act de parliament ne ſerra tranſferre al auters. Iſſint fuit adiudge Trin̄ 25. Eliz. in le Marqueſſe de Wincheſters caſe, (quel vide in le 4. part de mes Reports) q̄ per geñal paroly de touts hereditamts &c. vn br̄e de Erroz que pſon attaint auoit ne fuit done al Roy, car br̄e de Error eſt br̄e q̄ giſt in pzuitie: Et le chiefe Baron dit, que il ne veye vnques in aſcun Act de Attaindr̄, actions q̄ appent al perſon attaint done al Roy. En temps H. 8. Brooke tit̄ Corodie 3. eſt tenus, que vn Founderſhip, q̄ auxy eſt choſe annexe inſeperablemt al ſanke del foundoz, ne ſerra forfeit per attainder, vide l. 5. Ed. 4. Mes in le caſe al bart̄, le condition, ſ. le tender del

anule, nest pas annexe al person de Sir Fraunces, mes chescun auter poit ceo faire cibien come luy mesme. Mesme la ley de payment de money, deliuerie de esperons de oze, ou auters sembles. Quant al 3. obiection fuit resolue, q̃ quant le statute done le condition al Roigne, q̃ le perfozmance de ceo (que nest pas personell ꝛ inseperable) est done auxy al Roigne, come incident a ceo; car le perfozmance est le substance ꝛ leffect del condition, ꝛ lestatute mit le Roy in le lieu del pson attaint a faire ceo pur le perfozmãce del condition, q̃ est feasible, ꝛ q̃ nest pas inseperablement annex al person de cestuy q̃ est attaint. ¶ 4. Fuit obiect, que coment que le condition serra done al Roigne ꝛ le perfozmance de ceo auxy, uncoꝰ le leas ne serr̃ void, car lestate pur vie de Sir Frances ne fuit subiect al condition: car un vse al common ley fuit un trust ꝛ confidence repose in un pson, q̃ auter pson auera lez pfits, ißint q̃ couient este seperation del possession, ꝛ del vse, ou per couenant, ou p feoffement, fine, ou auter conueyance, p que est un transmutation del possession: mes in nr̃e case, il mesme estoyera seisi al vse de luy mesme pur vie, q̃ ne poyt este come un vse, car il mesme est terre tenant, ꝛ nest ascun seperation del possession, ꝛ nest ascun trust ou confidence, ꝛ il ne poit auer Subpœna vers luy mesme a deuant le statute; ꝛ le statute de 27. H. 8. execute possession a cesty solemẽt que ad un vse, ꝛ que nad possession deuant: mes Sir Fraunces in nr̃e case ad le possession deuant, ꝛ pur ceo le statute ne poit doner possession a luy, mes son estate pur vye fuit parcell de son veiel estate. Auxy nota, lestatute de 27. H. 8. dit, al vse dun auter pson ꝛc. ißint que auter person couient dauer le vse que cesty que ad le possession. Et Vide 30. H. 8. tit̃ Feoffements al vse Br. 47. cesty q̃ vse in tayle deuant lestatute fuit infeoffe per les feoffees, ꝛ puis lestatute de 27. H. 8. fuit fait, lestatute ne donera a luy possession in taile solonqꝫ le vse, pur ceo que il ad le possession deuant, pur ceo q̃ ne fuit seperation del vse ꝛ possession al temps del fealaunce del statute. Et donques si lestate pur vie soit parcel de son veyel estate, ceo nest pas subiect al dit prouiso ou condition, ꝛ per consequence per le perfozmaunce del condition lestate pur vie nest defeate, ꝛ donques le leas pur 40. ans que est derive hoꝛs de ceo remaine bone. Mes fuit resolue per le Court, que Sir Fraunces ad le estate pur vie per le limitation del vse ꝛ loperation del statute de 27. Hen. 8. ꝛ ils mult relioint sur le reason ꝛ rule de Baintons case in Plowd. Comment̃, que home pur aduauncement de ses heires males poit couenaunter, a estoyer seisi al vse de luy mesme ꝛ ses heires de son coꝛps: in cest case est nul seperation del possession ꝛ vse, ꝛ uncoꝛe

lestatute

leſtatute create vn eſtate in taile in poſſeſſion in luy, in quel caſe tout leſtate taile eſt in luy meſme; mes ceo eſt pur le benefite del heire male, coment que il eſt in futuro, & nemy in præſenti, car nul poit ſcauer que ſerra ſon heire male, car ſolus Deus facit hæredes non homo: mes in ceſt caſe ceo eſt pur le benefit del Nephewe in præſenti, dauer les vſes raiſe ſolonque les dits Indentures. ¶ 5. Fuit obiect, que coment que leſtate pur vie ſoit defeate per le condition, vncore le Roigne ne auoydera ſon leas demeſne: car quant le Roygne ad eſtate pur auter vie, & auxy condition in luy per leſtatute de triceſimo tertio Hen. octaui, & el fait leas pur ans, coment que le Roigne performe le condition, el nauoidera le leas. Come ſi in tiel caſe vn common perſon vſt ewe leſtate pur vie, & le Roigne le condition, & le common perſon vſt fayt leaſe del terre, et le Roigne vſt confirme ceo, et puis le condition eſt perfourme, vncore le leaſe eſt bone. Et ſi le morgagee fait leas pur ans, & le morgageor confirme ceo, & puis le condition eſt performe, le leaſe ne ſerra auoyde. Et le caſe dun Arden fuit cite. Tenant in tayle fait leaſe pur vie, ore il ad graine nouel fee per tort, & puis il graunt rent charge, ou fait leaſe pur ans, & puis tenant pur vie morust, il nauoydra ſa charge, ou leaſe, coment que il ſoyt eins dun auter eſtate, pur ceo que il auoit defeaſible poſſeſſion, & auncient droit, le queux ſi ſoyent in ſeuerall maines ſerra bone, come leas de lun, & confirmation de lauter, & eſteant in lun maine, ſerra tant in iudgement del ley. Nota, le leaſe eſt le pluis fort caſe que le charge. Vndecimo Hen. 7. 21. Edriche tenant in taile fait feoffement a ſon vſe ſur condition, & puis ſur ſon recogniſaunce le terre eſt extende per leſtatute de primo Rich. tertij, & puis il forme le condition, vncore le intereſt del conuſee ne ſerra auoide, & vncore leſtate eſt chaunge, Cauſa qua ſupra. Et tout ceo fuit affirme per Curiam. Mes quant a ceo fuit reſolue, que le demiſe le Roigne ne enurera (a ſon ſpeciall preiudice) a 2. entents, §. a vn demiſe del terre, & auxy a vn ſuſpenſion de ſon condition, per que el poit defeater leſtate pur vie, & les auters eſtates, come ſerra in le caſe dun common perſon, ou a vn demiſe in reſpect de ſon preſent eſtate pur auter vie, & auxy a vn confirmation in reſpect de ſon condition, per que auterment el poit defeater tout, come ſerra auxy in le caſe de common perſon: Car le graunt le Roy ſerra priſe ſolonque ſon expreſſe intention comprehend in ſon graunt, & ne extendeñ al aſcun auter choſe per conſtruc-

tion, ou implication, que nappiert per son graunt que son entent extendō ; & pur ceo in tiels cases, le Roy couient este voirement informe, & il doit faire especiall & particular graunt, que per expresse parolx poit enure a touts tiels seuerall intents come sont desire. Come in 17.E.3.39. Aduowson ten⁹ del Roy est alien a vn Abbot, ore le Roy ad title al aduowson pur le mortmaine, & puis le Roy per ses Letters patents graunt al Abbot que il poit tener laduowson in proper oeps, vncore il ne perdeᵗ aduantage del mortmaine, car quant le Roy ad 2. droits in luy, il ne poit exclude luy de ambideux sauns speciall parolx. Vide 9.H.7.14. Plowd. Commenᵗ 397.&c. Et si in cest case le demise le Roign amountera a vn confirmation per force de son condition, ou si le demise amounteᵗ a vn suspension del condition, donques sur ceo ensuera, que el durant le terme ne poyt performer le condition, quel serra graundment preiudiciall al Roy. ℂ 6. Et quant al dit tender per force des dits Letters patents, & le certificate del ceo in Lexchequer, fuit obiect, que ceo ne serra sufficient, mes le tender couient este troue per office, car coment que les Letters Patents sont de record, vncore le tender mesme est matter in fact, quel couient este troue per office ; car certificate de Euesq per force del briefe le Roy, ou del Marshall del host le Roy, come in 2. Edw.4. fol. 1. queux & autielx semblables ne sont trauersable, mes sont trials in ley, & lyera les parties: Mes in nostre case, si cest certificate, que nest fait sur ascun ordinarie course de proceeding, serra bone in ley, serra graund preiudice al party, car nul certificate que est allowe & garrant per le Common ley est trauersable ; & donques le matter poyt este faux, & le party disherite, & vncore il nauera ascun remedie, le quel serra inconuenient. Mes fuit resolue per totam Curiam, que le tender & certificate in cest case fuit assets sufficient, & que le party greeue si ceo soit faux, poyt trauerse ceo, & ne serra conclude per ceo, car ceo ne fuit in nature dun tryall, mes dun record a informer & satisfier le Roigne de sa title. Auxy ils resoluont, que maintenant per le tender del anule solonque le dit prouiso, ou condition, les vses fueront determine, et nul in ley, et per consequence, le terre vest in le Roigne per force del attaindre et del act de tricesimo tertio Hen. octaui. ℂ 7. Fuit obiect, que le dit conueyance fuit voide per le dit Act de 28. Elizabeth. et donques fuit Sir Fraunces al temps de son Treason commit et attaindre sur ceo seisie des dits terres in fee queux fueᵗ forfeit al Roigne, & vest in luy per le dit act de 33. H.8. & per consequens

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le dit leas fait per le Roigne (eſteant al temps de ſeaſaunce de ceo ſeiſie in fee) eſt bone: ⁊ a prouer que le conueyance fuit void per le ſtatute deuant le dit tender del anule, iſſint que leſtate ne fuit defeat per le condition, mes le conueyance in que le condition fuit conteine fait voide per le act de 28. Eliz. deuant le dit tender del anule, ⁊ deuant le leaſe fait ; le letter del ſtatute eſt, que cheſcun perſon ⁊c. within two yeares after the laſt day of that Seſſion, ſhall openly ſhew and bring foorth into the Exchequer his conueyance, and there in the Terme time in open Court ſhall exhibite &c. the ſame to be entred and inrolled of record &c. et le tender del ring fuit 18. Martij anñ 31. deuant quel iour touts les termes in les 2. ans fuer paſſe, iſſint que apres Hillary terme paſſe Anno 31. ne fuit poſſible que le conueyance ſerra inrolle deins les 2. ans in open Court in le temps del terme. Car les 2. ans paſſer per effluction de temps deuant Eaſter Terme, ⁊ pur ceo maintenant apres Hillary Terme paſſe le conueyance fuit voide, ⁊ per conſequence le condition auxi. Et ſur ceo le caſe in temps Ed. 1. tiſ Couenant 29. & Fitz. Nat. Bre. fuit miſs, que coment que le couenant ſoit que il layſer le boyes in cy bone plight ⁊c. al fine del terme, ſi le leſſee ſuccide les arbres, il auera couenant mantenant, car neſt poſſible que il layſer les arbres ⁊c. al fine del terme, iſſint que le impoſſibilitie del act donera preſent action ſur future couenant. Mes fuit reſolue per le Court que al temps del tender del anule le dit conueyance (⁊ per conſequence le condition) fuit in force: ⁊ iour reaſon fuit pur ceo que leſtatute ne require que le inrouliment del conueyance que eſt fact del Court ſerr deins les 2. ans, mes le monſtrans ⁊ exhibiting de ceo que eſt fact del party couient eſtre deins les 2. ans, car quant al monſtrans ⁊ exhibiting del conueyance les paroix ſont (within two yeares &c. ſhall &c. there in the terme time in open Court exhibite the ſame) donques les paroix prochein enſuants ſont (to be entred and inrolled of record) iſſint que nul temps eſt limit quant ceo ſerra inrolle, mes ſi les paroix auoient eſte, and then and there ſhall be entred and inrolled of record, donques le conueyance couient dauer eſte inrolle deins les 2. ans, mes, come les paroix ſont, ceo poyt eſte inrolle apres les 2. ans paſſe. Et ceo fuit le primer caſe (dont ieo av notice) que fuit argue et adiudge ſur le dit act de 33. H. 8. que done conditions de perſons attainted de Treaſon al Roy. Et in le argument de ceſt caſe le caſe de Thomas Markenfield armig Anno 19. Eliz. in Leſchequer, ⁊ diuers auters caſes des perſons attainted de Treaſon, queux auoyent power de reuocation, fuer cite,

et ſur conſideration de eux p les Barons, ils reſoluont vt ſupra, et done iudgement pur le Roigne. Mes le Councell del Fraunces Engleſield ne fuer ſatiſfie oue le iudgemẽt, & principalmẽt quant al principall point: Car ſemble a eux q̃ come ceſt caſe eſt, le condition fuit cy inſeperablemẽt annex al pſon de Sir Fraunces, q̃ ceo ne fuit done al Roigñ p le dit act de 33. H. 8. Et lour aduiſe fuit a poꝛter bꝛe de Error. Mes al pꝛocheine parliamẽt, ſ. 35. El. eſpecial act de parliament fuit fait a eſtablier le foꝛfeiture al Roigne.

Trin 34. Eliz.

Caſe de Swannes.

IN le Roigne & Madam Joan Yong iades le feñ de Sir John Yong Chiualer deceaſe, & Thomas Saunger def. le caſe fuit tiel. Un office fuit troue al W. in le County de Doꝛſ. 18. Septemb. Añ 32. Eliz. deuant Sir Mat. Arundel & auters commiſſioners del Roigne deſouth le graund ſeale, Qd' a villa de Abbotsburie in prædict' comitat Dorſ. vſq; ad mare p inſulam de Portland in eodem com eſt quædam eſtuaria, Anglicè a Mere oꝛ Flete, in quam mare fluit & refluit, in qua quidem eſtuaria ſunt 500. cigni, quorum 410. ſunt albi, & 90. ſunt cignetti, & quod omnes prædicti cigni & cignetti ſunt in poſſeſſione Iohannæ Yong & Thom Saunger, & quod quilibet eorum eſt valoris 2. ſ. 6. d'. quodque maior pars tempore captionis dictæ inquiſitionis minimè fuer ſignat: quel office eſteant certifie in Leſchequer, vn bꝛiefe fuit direct al Vicont de meſme le County a ſeiſier touts les dits blaunche Swannes nient marked, per foꝛce de que le Vicont retoꝛn, que il ad ſeiſi 400. blaunche Swannes &c. A q̃ puis, ſ. Hillar 34. Eliz. les dits

Joan

Joan Pong, & Thomas Saunger plede, Qd' prædict' eſtuaria ſiue aqua, iacet in parochia de Abbotsbury, in Comitatu Dorſ. (& abbutt ceo) & q̃ deuant le inquiſition pꝛiſe, Labbot de Abbotſbury fuit ſeiſitus de prædict' eſtuar̃, & de ripis & ſolo eiuſdem in fee, & que al temps del inquiſition, & de temps dont &c. fuit, & adhuc eſt quidam volatus cignorum & cignettorum ferorum, vocat̃ a game of wilde Swannes, in eſtuaria ſiue aqua illa, & ripis, & ſolo eiuſdem nidificant̃, gigneñ, & frequentañ, Anglicè haunting, de quo quidem volatu cignorum & cignettorũ, prædict' Abbas et omnes prędeceſſores ſui Abbates Monaſterij prædicti, per totum tempus prædict' habuere & gauiſi fuerunt, & habere & gaudere conſueuerũt, toꝫ ꝓfic' & increment̃ omnium & ſinguloꝝ cignorũ & cignettorũ ferorũ in eſtuaria p̃dicta nidificant̃, gignent̃, & frequent̃ : qui quidem cigni & cignetti per totum tempus p̃dict' fuerunt feræ naturæ, & infra idem tempus ijdem cigni & cignetti ſeu eorũ aliqui aliquo ſigno non vſi fuiſſent, nec conſueuiſſent ſignari, niſi qd' præd' nuꝑ Abbas & prædeceſſores ſui præd', per totum tempus p̃d' ad eorum libitum quoſdam ſeu aliquos de minoribus cignettis annuatim pullulant̃, quos ad vſum & culinæ & hoſpitalitatis ſuæ ſtatuerunt expendend', in hunc modũ annuatim ſignare conſueuerunt, & vſi fuerunt, vidꝫt, amputare mediam iuncturam vnius alæ, Anglicè to cut off the pinion of one wing, cuiuſlibet talis cignetti, ea intentione, quod cignetti ſic amputati minimè valerent auolare : Et puis le dit Abbot ſurrender les pꝛemiſſes al Roy H. 8. que annñ 35. de ſon raign̄ graunt al Giles Strangwaies armig̃ per ſes letters patents, (inter alia) totam illam liberam piſcariam noſtram in aqua vocat̃ the Fleet in Abbotſbury p̃dict', ac omnia meſuagia, aquas, piſcat̃, ac cætera hæreditament̃ noſtr̃ quæcunque in Abbotsbury, in dict' com̃ Dorſ. dicto nuper Monaſterio &c. adeo plenè & integrè &c. et in tam amplis modo & forma &c. & q̃ le dit Gyles mozuſt, & ceo diſcend a vn Giles Strangwayes ſon Coſine & heire que demiſe al def. le dit game de Swannes pur vn an &c. et pꝛiont quod manus dictæ dominæ Reginæ amoueantur. Sur que Latturney le Roigne demurre in ley.

¶ 1. Fuit reſolue, que touts blaunche cignes nient marked, queux ount gaine lour naturall libertie, & ſont natants in vn ouert & common riuer, poyent eſte ſeiſi al vſe le Roy ꝑ ſon Pꝛerogatiue, pur ceo q̃ volatiliũ (quæ ſunt feræ naturæ) alia ſunt regalia, alia cõia : & iſſint aquatilium, alia ſunt regalia, alia cõia : come vn cigne eſt volatile royall, & touts ceux le ꝓpertie de q̃ neſt pas conus, appent al Roy ꝑ ſon pꝛerogatiue : & iſſint Balene & Sturgeons ſont piſſons royal, & appent al Roy ꝑ ſon p̃rogatiue. Et la auoit eſte auncient officer le Roy appell' Magiſtr̃ deductus cignorũ,

que

que continue ieſqꝫ a ceſt iour. Mes fuit auxy reſolue, que le ſubiect poyt auer pꝛopertie in blaunche Cignes nient marked, come alcun poit auer cignes nient marked in ſes pꝛiuate ewes: le pꝛoperty de eux apperteiñ a luy, ⁊ nemy al Roy, ⁊ ſils eſcapont hoꝛs de ſes pꝛiuate ewes in vn ouert ⁊ common riuer, il poit eux ameſner, ⁊ eux repꝛender: Et oue ceo accoꝛd Bracton Lib.2.c.1. fol. 9. Si autem Animalia fera facta fuerint manſueta, & ex conſuetudine eunt & redeunt, volant & reuolant (vt ſunt cerui, cigni, pauones, & columbæ, & huiuſmodi) eouſque noſtra intelligantur, quamdiu habuerint animum reuertendi. Mes ſils ont gaine lour naturall liberty, ⁊ ſont natants in ouert ⁊ common riuers, le officer le Roy poit eux ſeiſier in le ouert ⁊ cõmon riuer pur le Roy, car vn blaunche cigne ſans tiel purſuit (come eſt auantdit) ne poit eſte conus del auter, ⁊ quant le pꝛoperty dun Cigne ne poit eſte conus, ceo eſteant de ſon nature royall volatile, appent al Roy. Et in ceſt caſe le liure in 7.H.6.27. fuit vouche, ou Sir John Tiptoft poꝛt acc̃ de Treſpas de ſes cignes a toꝛt pꝛiſe: le def. plede q̃ il eſt ſeĩ del ſeigniozie de S. deins q̃l ſeigniozie touts ceux q̃ eſtate il ad in le dit ſeigniozie ont ewe de temps dont ⁊c. touts ſtreyes eſteant deins le dit manour, ⁊ nous diomus que les dits cignes fueront eſtrayants al temps in le lieu ou ⁊c. ⁊ nous come ſeigniоz ſeiſomus, ⁊ feſomus pꝛoclamation in faires ⁊ markets, ⁊ tantoſt q̃ nous auomus notice que fueĩ voſtꝛ̃ cignes, nouz a vouz deliueramus a tiel lieu: Le pl̃ reply, q̃ il fuit ſeĩ del manour de B. ioynant al ſñoꝛie de S. ⁊ diom⁹. q̃ nous ⁊ nous anceſtꝛ̃s, ⁊ touts ceux ⁊c. ont ewe vſe de temps dont ⁊c. pur auer cignes natants p my tout le ſñioꝛie de S. ⁊ diomus que longe temps deuant le pꝛiſel, nous mittomus eins, ⁊ feſomus notice de eux al def. que fueĩ noſtre cignes, ⁊ pꝛiomus noſtre damages: ⁊ le opinion de Straunge la fuit oꝛe bien appꝛoue per le Court, que le replication fuit bone, car quant le pl̃ poit loyalment mitter ſes cignes la, eux ne poyent eſtre ſtrayes, nient pluis q̃ les auers dalcun poyent eſte ſtrayes in tiel lieu ou ils doyent auer common, pur ceo que ils ſont la ou le owner ad intereſt de mitter eux, ⁊ in quel lieu ils poyent eſte ſans alcun negligence ou laches in le owner. Hoꝛs de q̃l caſe ceux points fueront obſerue concernant Cignes. ¶ 1. Que chelcun q̃ ad cignes deins ſon manour, ceſtaſcauoir, deins ſes pꝛiuate ewes ad pꝛopertie in eux, car le bꝛiefe de Treſpas fuit de ſes cignes a toꝛt pꝛiſe, ſ. Quare cignos ſuos &c. ¶ 2. Que vn poit p̃ſcribe dauer game de cignes deins ſon manour, cybien come warren, ou parke. ¶ 3. Que ceſty q̃ ad tiel game de cignes poit pꝛeſcriber, que ſes cignes nateĩ deins le manour

manour dun autr̃. ¶4. Que vn cigne poit estr̃ estray: ꝛ issint ne poit este alcun auter volatile, q̃ ieo ay lie in alcun liure. En 2.R.3. fo.15.& 16. le Sr̃ Strange ꝛ Sir John Charleton porr̃ acc̃ de Trr̃s vs 3. pur ceo q̃ les def. auoyent prise ꝛ imports 40. cignetz des pl̃ in le County de Buck. as dam̃s de r.l. Un des def. plede, q̃ le ewe de Thamise curge p my tout le Roialm̃, ꝛ q̃ le dit County de Buck. est adioinant al Thamise, ꝛ q̃ le custõe del dit Coũty de Buck. est, ꝛ ad estr̃ de temps dont ꝛc. q̃ chescun cigne (car cignet in le liure est prise pur vn cigne) q̃ ad son courle in alcũ ewe, q̃ ewe curge al Thamise deins m̃ le County, q̃ si cigne viẽt ſ̃ le fre dascun hõe, ꝛ la eyze ꝛ ad cignets sur m̃ la terr̃, q̃ donq̃z cẽy q̃ ad le p=perty ð le cigne a ̃a 2. de les cignets, ꝛ cesty a q̃ le fre est a ̃a le 3. cignet, le q̃l serr̃ de meins value q̃ lauks 2. Et ceo fuit adiudge bon custome, pur ceo q̃ le possessor del fre suffer eux deyzer la, ou il puit a ̃ eux enchaser hors. Et p cest iudgem̃t auxy appiert q̃ hõe poit allegg̃ custom̃ ou p̃scribe in cignes ou cignets. Et in m̃ le cas est dit, q̃ in verity le matr̃ fuit, q̃ le sr̃ Straũg̃ auoit certein cig=nes, q̃ux fuer̃ cocks, ꝛ Sir John Charletõ certeine cignes q̃ fuer̃ hens, ꝛ eux auoient cignets inr̃ eux, ꝛ pur ceux cignets les owñs ioindr̃õt in vn acc̃, car in tiel case, p geñal custom̃ del Realm̃, q̃ est le cõmon ley in tiel case, les cignets appẽt al ambideux les owñs in cõmon owelm̃t, s. al owner del cock, ꝛ al owñ del hen, ꝛ lez cig=nets ſ̃a deuide inr̃ eux, ꝛ le ley de ceo est foundue sur vn reason in natur̃: car le cock cigne est vn embleme, ou rep̃sentation dñi affec=tionate ꝛ voyer baron a sa feme oustr̃ touts auks volatiles, car le cock cigne teigne luy m̃ a vn female soleм̃t, ꝛ a cest cause nature ad conferre sur luy vn done oustr̃ touts auks, ꝛ ceo est a mozer cy ioyeusm̃t, q̃ il chaunta dulcemẽt q̃n̄ il mozust, sur q̃ le Poet dit:

Dulcia defecta modulatur carmina lingua,
Cantator, cygnus funeris ipse sui. &c.

ꝛ pur c̃ cest case de cigne differt de case ð kine ou aur̃ brute beasts: Vide 7.H.4.9. Et fuit agree q̃ nul poit a ̃ Swan marke, q̃ Latinè dicit cigninota, sinõ q̃ soit p grãt le roy, ou de sez offic̃s a c̃ authorise, ou p p̃scripc̃, ꝛ sil ad loiall Swan mark, ꝛ ad cignes natãts in oñts ꝛ cõmõ riũs loialm̃t marke oue c̃, eux appẽt a luy ratione priuileg': Mes nul a ̃a Swan marke ou game de cignes, sinon q̃ il ad frez ꝛ teñts destate de franktenem̃t del annuel value de 5. marks, oustr̃ touts chargz, ſ̃ pain de forfeitur̃ de ses cignes, dont le Roy a ̃a lũ moity, ꝛ cesty q̃ seise a ̃a lautr̃ moity; ꝛ c̃ est p lesta. de 22.E.4.ca.6. Et cesty q̃ ad tiel Swan marke, poit ceo granter oustr̃. Et de ceo ieo ay veie vn notabl̃ p̃sident in tẽps H.6. ꝛ est tiel. Notum sit om-nibus hominibus p̃ntibus & futuris, qd' ego Iohẽs Steward Mil̃, dedi & con-

concessi Thomæ filio meo primogenito,& hęredib⁹ suꝯ, cigninotā meā armoꝝ meoꝝ, ꝓut in margine laterali pingitur,quæ mihi iure hęreditario discēdebat post mortē Ioh.Steward militis pr̄is mei: Habend' sibi et hęredibus suis, vnà cum oīb⁹ cignis & cigniculis, cum dicta nota baculi nodati signat̄,sub cōditione, q̄ quilibet feria solis durañ vita,à gula Augusti,vsq; ad Carnispriuiū apud domū meā de Darford, vnū cigniculū bene signatū mihi aut meis deliberet,qd' si defecerit, tunc volo,qd' hoc p̄sēs chirographū cassetur ꝑnitus,& ꝓ nihilo hēatur.In cuius rei testim̄ ad instantiā Matildę vxoris meæ,meum sigill' secretum Christi crucifixi p̄sentibus feci apponi. Hijs testibus,Rob.Clico,Ioh. de Conyers,Alano Fabro,& al̄.Dat̄ apud domum meam mansionalē de Darf. in vigilia S.Dunst.Ep̄i, anno regni Regꝯ Henrici post cōquestum Angl' sexti 14. **et in le margent fuit depict vn petit ragged staffe. Et in cest case fuit resolue,q̄ in ascun de ceux q̄ sont** feræ natur̄, **home ad** ius proprietatis, **vn droit de ꝓperty,& in ascun de eux home ad** ius priuileg', **vn droit de priuiledge. Et sont 3.mañ de droits de propertie, s. ꝓperty absolute,ꝓperty qualified,& ꝓperty possessorie: propertie absolute home nad in ascū q̄ est** ferę natur̄,**mes in ceux q̄ sont** domitę natur̄ : **ꝓperty qualified & possessorie home poit aū in eux q̄ sont** feræ natur̄, **& a tiel ꝓptie hōe poit attainer ꝑ 2. voies, ꝑ industrie, ou** ratione impotentiæ,& loci;**ꝑ industrie, come ꝑ ꝓisel de eux, ou ꝑ fesans de eux** mansueta,i.manui assueta,**ou** domestica, i.domui assueta : **Mes in ceux q̄ sont** feræ natur̄, **& per industrie sont fait tame, hōe nad forsq; qualified ꝓpty in eux, s.cy long come eux remaine tame,car sils attainont a lour naturall liberty, & nont** animū reuertendi,**le ꝓperty est pdue,** ratione impotētiæ & loci : **Come hōe ad iune shoueler,ou goshawke,ou sēblable,q̄ux sont** ferę natur̄, **& ayzont in mon fre,ieo ay possessarie ꝓpertie in eux; car si vn ꝓist eux quāt ilz ne poiēt voler, le owner del soile aūa actiō de Trñs,** Quare boscꝰ suum fregit, & tres pullos espuorum suoꝝ,**ou** ardearū suar̄, precij tantum,nuper in eodē boscō nidificant̄,cepit & asportauit,**& oue ceo accord le** Regist̄er, & Fitz.Nat.Br. 86.b. & 89.b. 10.E.4.14. 18.E. 4.8. 14.H.8.1.b. Stamford 25.b.&c. Vide 12. H.8. 4. & 18.H.8.2. **Mes quant home ad beasts sauages** ratione priuilegij, **come per reason de parke,garren,&c. il nad ascun ꝓperty in la deere, ou conies, ou phesants, ou partridges; & pur ceo in action,** Quare parcū,warrennam,&c. fregit & intrauit,& 3.damas,lepores, cuniculos, phasianos,perdices,&c. cepit et asportauit. **il ne dirra** suos, **car il nad ꝓpertie in eux, mes ils appent a luy** ratione priuilegij **pur son game & pleasur̄,cy long come ils remainont in le lieu priuiledge; Car si owner del Parke mozust,son heire auera eux, & nemy ses executozs ou administratozs, pur ceo q̄ sans eux le ꝓke q̄ est vn**

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inheritance neſt my compleat; ne felony poit eſte cõmit de eux, mes de eux q̃ ſont faits tame, in q̃ux home per ſon induſtrie ad aſcun ꝓperty, felony poit eſte commit. Et oue ceo accord̃ le rule del liure in 3.H.6.55.b. 8.E.4.5.b. 22.H.6.59. que eſt malement repoꝛt, & 43.E.4.24. Vide 22. Aſſ. 12.H.8.3. 13.Eliz. Dyer 306. 38.E.3 10. Vide 2.E.2. tit̃ Diſtres 2.E.2. Auowry 182. Mes home auera ꝓpertie in aſcun choſes q̃ ſont de cy baſe nature q̃ nul felony poit eſte commit de eux, & nul home perdꝛa pur eux vie ou member; come de bloodhound & vn maſtife moloſſus, 12.H.8.3. Vide 18.H.8.2. Mes ceſty q̃ emblee les egges de cignes hoꝛs del neſt, ſ̃ra impꝛiſon per vn an & iour, & fine al volunt le Roy, lun moitie al Roy, & lauter al owner del terr̃ ou les egges fuer̃ iſſint pꝛiſe, & ceo eſt p̃ le ſtatute de 11.H.7. cap.17. Et dauncient temps ad eſte dit, q̃ ceſty que emblee cigne in ouert & cõmon riuer, loyalment marked, meſm̃ le cigne (ſi poit eſte) ou auk̃ cigne, ſerr̃ pend̃ in vn meaſon p̃ le beake, & ceſty q̃ emblea lui ſerr̃, in recompence de ceo, chaſe a doner al owner tant de frumẽt q̃ poit couerer tout le cigne, per mitter & verſer del frument ſur teſte del cigne, tanꝛ le teſte del cigne ſoit couer oue le frument. Et fuit reſolue, que in le pꝛincipall caſe, le pꝛeſcripc̃ fuit inſufficient, car leffect del dit p̃ſcription eſt dauer touts wilde Cignes q̃ ſont feræ natura, & nient marke, nidificanr̃, gignenr̃, & frequentanr̃, deins le dit creeke. Et tiel pꝛeſcripc̃ pur vn warren ſerra inſufficient, ſ̃ dauer touts pheſants & partridges nidificants, gignents, & frequentants deins ſon manoꝛ. Mes doit dire dañ free warren de eux deins ſon manoꝛ, car conſt q̃ ils ſont nidificants, gignents, & frequentants in le manoꝛ, il ne poit auer eux iure priuilegij, mes cy long come ils ſont deins le lieu. Mes fuit reſolue, q̃ ſi les def. auoyent alledge q̃ deins le dit creke la auoit eſte de tẽps dont &c. vn game de wilde Swannes nient marked, nidificants & gignents, & donq̃s dauer p̃ſcribe q̃ tiel Abbot, & touts les p̃deceſſoꝛs &c. auoient vſe de touts temps a añ & pꝛẽder a lour oeps, aſcuns de le dit game de wilde Swannes, & lour cignets deins le dit creeke, ceo vſt eſte bone, car conſt q̃ cignes ſont royall volatiles, vncoꝛ in tiel maner home poit p̃ſcribe in eux, car ceo poit auer loyall cõmenceñt p̃ graunt le Roy, car in Roꝛ Patenr̃ añ 30. E.3. pte 2. numero 20. le Roy graunt a C. W. touts fere cignes vnmarked infr̃ Oxford & Londꝛes pur 7. ans: In eodem Roꝛ añ 16.R.2. pte 1. numero 39. autiel graunt de fere cignes vnmarked in le County de Cambridg. al B. Bereford chr̃er: In eodẽ Roꝛ añ 1.H.4. pte 6. numer̃ 14. vn graunt fait a John Fenne, a ſurueyer & cuſtodier touts fere cignes vnmarked, ita quod de proficuo reſpondeat ad Scaccarium,

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per q̃ux appiert, q̃ le Roy poit graunter fere cignes vnmarked, ꝛ per conſequens home poit preſcriber in eux deins certeine lieu, pur ceo q̃ ceo poit auer loyall commencement. Et home poit preſcriber dauer royal piſſons deins ſon manour, come eſt tenus in 39.E.3.55 pur le reaſon auantdit, ꝛ vncore ſans p̃ſcript il ſ appent al Roy p ſon p̃rogatiue.

Mich̃ 39. & 40. Eliz. in Leſche-quer.

Sir Thomas Cecils caſe.

SIr Thomas Cecill eſteant ſeiſi del mannor de Strickſton in le County de Northh. ent̃ in communication oue vn Foſter a exchaunger diuers parcels de ceo oue luy, pur certain tres q̃ le dit Foſter ad in meſme le ville, ꝛ deuant alcun exchaung̃ pfected, Sir Thomas conuey le dit mannor ꝛ le dit terre del dit Foſter, per ſpecial noſme del dit Foſter p fait indent ꝛ inrolle, al Roigne Elizabeth ſes heires ꝛ ſucceſſors, ꝛ couenant oue le Roigne que il fuit ſeiſi cybien del dit mannor, come des dits terres, iades Foſters dun bone eſtate in fee ſimple ꝛc. et le dit Sir Thomas fuit lie al Roigne in vn obligation in 10000. marks a perfozmer le dit couenant inſ auks. Et le dit Sir Thomas auoit, deuant ceſt tẽps, exhibite vn Bill in Anglois in leſchequer Chamber, cõpernant le matter auãtdit, ꝛ q̃ les dits tres, pcell del dit mannor, intend deſte done in exchaunge al Foſter, fuer̃ de greinder valne, q̃ le dit terre del dit Foſter, iſſint q̃ le Roigne ne fuit deceiue in le value, queux terres pcel del mannor paſſont al Roy per le conueyance del manor, ꝛ niẽt meins le couenant ꝛ obligation del dit Sir Tho. quant a ceo fuer̃ enfreint, ꝛ forfeit p le rigor del ley.

Wes

Mes le dit Sir Thomas in ſon bil relia ſur leſtatute de 33. H. 8. cap. 39. per que eſt puruiew, That if any perſon, of whom any ſuch debt or dutie, is, or at any time hereafter ſhall bee demanded, alleadge, plead, declare, or ſhew in any of the ſaid Courts, good, perfect, and ſufficient cauſe and matter in law, reaſon, or good conſcience, in barre or diſcharge of the ſaid debt, or dutie, or why ſuch perſon or perſons ought not to be charged, or chargeable, to, or with the ſame, and the ſame cauſe or matter ſufficiently prooue in ſuch one of the ſaid Courts, as he or they ſhall be impleaded, ſued, vexed, or troubled for the ſame; That then the ſaid Courts, and euery of them, ſhall haue ful power, and authoritie, to accept, iudge, and allow the ſame proofe, and wholly and cleerely to acquite and diſcharge all and euery perſon and perſons, that ſhall be ſo pleaded, vexed, ſued, or troubled for the ſame: any thing in this preſent act before mentioned to the contrarie notwithſtanding, &c. et que ꝑces fuit ſue vers luy ſur le dit obligation hors del court del Eſchequer. Sur q̄l act de pliament, & le matter auant-dit (eſteant come il ſuppoſe bone, ꝑfect, & ſufficient cauſe & matter in reaſon & bone conſcience deins le dit Act, a diſcharger luy del dit obligation) le dit Sir Thomas ꝑ ſon dit bill ꝓia deſtre relieue, et ſur ceo il auoit Cōmiſſion a examiēr teſmoignes a ꝑuer le matter de ſon bill deſtre voier, q̄ux fueṙ retorne et publie; Et ſur le oier del cauſe in Court in Leſcheq̄r chamber, appiert ꝑ le teſtimonie de diūs teſmoignes, que le pl̄ ad fait direct ꝓoofe de touts les parts de ſon bill. Et ore in ceſt terme añ 39. & 40. Eliz. diuers q̄ſtions fueṙ moue touchant ceſt matter. ¶ 1. Et le ꝓncipall fuit, Si le braunch del act extende a aſcun det mention in le dit act, pur quoy le Roy ad remedie ꝑ le common ley, ou in tiels dets, et tiels caſes ſoleṁt, pur quoy le dit act done remedie al roy q̄ il nauoit deuant. ¶ 2. Si le court poit faire diſcharge ꝑ decree ſur ceſt bill in Angloys deins lentention del act. Et quant al ꝓmer, eſt aſcauoir, que diuers braunches del act ſont deſtre conſider. 1. Lact fait toutz obligations al Roy in nature dun ſtatute Staple. 2. Auter braunch done la ſuit al Roy, comēt q̄ lobligac̄ ad eſtre fait al autṙ al vſe del Roy. 3. Que le Roy ſur ſuit ſur cheſcun obligac̄ fait, ou en apres dēe fait, recouera damages & coſts. 4. Leſtatute done remedie al Roy pur recoūr de ſon det ou dutie &c. per Capias, Extend' fac', Subpœna, Attachment, & Proclamation de allegeance (ſi beſoigne ſoit) ou auterṁt come a aſcū des Courts ſeṙ per lour diſcretions penſe expediēt pur le ſpeedy recoūr des dets le Roy. 5. Eſt vn clauſe, q̄ le Roy ſeṙ ꝑferre in ſon executions, deuant cōmon ꝓſons. 6. Le heire q̄ claime ꝑ done ſon auncestor ſra lie a paier le det le Roy (due deuant ou aps le done)

per iudgement, recognizance, obligation, ou auter ſpecialtie, et lia le terre auxi al dette le Roy vers liſſue in taile: Donques vient le dit prouiſo dont le queſtion ſurde, que commence, Prouided alwaies, and bee it enacted, That if any perſon &c. *vt ſupra.* Et fuit obiect, que ceo extendra ſolemẽt in tielx caſes in queux remedie eſt done al Roy per ceſt ſtatute; Come ou vn bond fuit fait al vſe del Roy, ou in charging del liſſue in taile, ou in charging le heire que claime per done deuant le det accrue &c. la pur ceo que leſtatute done al Roy remedie que il nauoit deuant, ceſt brauncb done le partie iſſint charge per ceſt act, plea a luy diſcharger, ou per matter de barre in ley, ou in bone conſcieuce. Et ceo fuit fortment inforce per le concluſion de ceſt prouiſo: car le concluſion eſt (come deuant appiert) any thing in this Act before mentioned to the contrarie notwithſtanding; iſſint que le ſence fuit, que le partie poit prender aſcun matter in ley ou bone conſcience, nient obſtant aſcun choſe conteine deins ceſt act, que eſt tant a dire, q̃ ceſt act ne ſerra impediment a ceo. Mes in noſtre caſe, le Roy ad remedie per le common ley, & ideo ceſt prouiſo ne aidera luy. Quant a ceo fuit rñde, & reſolue per le Court, que le dit Sir Tho. Cecill ſur le matter auantdit fuit deſte relieue p̃ le aide de ceſt prouiſo, car le dit act de 33. H. 8. ad done benefit et aduantage al Roy: 1. En fealant cheſcun bond fait al Roy in nature dun ſtatute ſtaple. 2. En donant remedie al Roy meſme pur obligations faits al auters a ſon oeps. 3. A recouer coſts & dammages. 4. En ſuer de execution pur touts ſes dets. 5. En charging liſſue in taile, & le heire que ad le terre de done ſon auncеſtor: & pur ceo fuit lentendmẽt del act a gratifier le ſubiect, que lon nouel prouiſion fuit fait pur le leuier del debt le Roy in pluys ſpeedy & beneficiall manner que le Roy nauoit deuant, le ſubiect auxy auera aſcun nouel benefit que il nauoit adeuant, et ceo fuit a diſcharger luy meſme per matter alleage deſte diſcharge in bone conſcience. Auxy ceſt prouiſo ne done benefite ſolement a ceſty que ad matter in bone conſcience, mes auxy a ceſty que ad good, perfect, and ſufficient cauſe and matter in law, reaſon, (et donques vient) good conſcience: et ſans queſtion le prẽmer parolx, ceſt aſcauoir, cauſe and matter in law, extendera a touts les dettes le Roy, et proces ſur ceo cibyen al common ley, come ſur ceſt act: et le concluſion del dit brauncb ne fait encounter ceo, car le ſence de ceo fuit, que il pledera matter in ley ou bone conſcience, et q̃ riens conteine in le dit act ne ſerra impediment a ceo. Et iſſint fuit tenus in ſemblable caſe ſur autiels parolx in le ſecond ſauant de 27. H. 8. ca. 10. de Uſes, in Chenies caſe, ou le

ou le prouiso saue le droit &c. des &c. sicome lact nust este fait: & la le case fuit, q̃ le lessor infeoffe le lessee al vse des auters, in q̃l case si lestatute ne vnqs vst este fait, le terme vst este merge al commõ ley: Mes Trin 27. Eliz. fuit resolue, que le terme fuit saue, & mesm̃ lexposition fait des pols come deuant. Auxi ceux notable presidents fuer̃ cite, q̃x fuer̃ resolue in Leschequer per les Barons del Eschequer, sur conference ewe oue les 2. chiefe Iustices, lun in le case de Sir William Herbert in Trin 37. Eliz. que fuit relieue sur le dit vsaunch del dit act per matter in equitie, pur ceo que in Scire facias vers luy come heire a Math. Herbert son pier, sur recognizance conust al roy Ed. 6. p le dit Mathew, le vicont retorñ Scire feci, & sur son default iudgem̃t fuit done, com̃ poies veier in Mathew Herberts case in le 3. part de mes Reports. Et pur ceo q̃ in veritie il ne vnqs fuit summon, & ad bone matter, sil auoit notice de ceo de pleder in discharge del dit Recognizance, pur ceo que il ad nul terre p discent de son pier, ne ascun terr̃ de luy aps le Recognizance conus: tout q̃ il monstr̃ in certaine in vn bill in Anglois in Leschequer chamber: sur q̃, sur conference ewe p Sir Roger Manwood, & les auters Barons, oue les 2. chiefe Iustices, per decree il fuit discharge del dit Recognizance &c. Auter case fuit cite: Thomas Duke de Norff. fuit attaint per pliament Ann̄ 38. H. 8. et le Roy Ed. 6. vende a Sir Edw. Rous diuers arbres de merisme cresceants sur les possessions del dit Duke in Suff. & Sir Edw. fuit lie in vn Obligation al Roy Ed. 6. pur paiment de certaine deniers, a certaine iour pur les dits arbres, & deuãt le iour de payment, et deuant le dit Sir Ed. succide ascun des dits arbres, Ed 6. morust, & al parliament tenus Anno 1. Reginę Mariæ fuit declare per parliament, que le dit attainder del dit duke fuit voide, per que le dit Sir Ed. ne vnques puit enioyer les dits arbres solonq̃ son bargaine. Et in Scire facias in leschequer sur le dit obligation vers le heir̃ & terre-tenant de Sir Ed. ann̄ 27. Eliz. ils apperont, & pledont tout le dit matter in equitie, in barre et discharge del dit Obligac̃, in vn Latine plea in Leschequer. Et sur bone consideration del statute de 33. H. 8. per les Barons, et del dit plea, al darraine (apres que ceo vst longement depende) fuit resolue per les Barons. que les def. fuer̃ deste relieue deins le dit act, & que les defendants bien poyent pleder ceo in barr̃. Et sur ceo Popham attorney generall, veyant lopinion del Court, vlterius psequi non vult. Queux ambideux presidents ieo monstr̃ a les Justices, et accordant fuit resolue per touts les Iustices Dengleterre (que fuer̃ assembles pur doner lour opinion in le dit case) que Sir Thomas Cecil fuit deste relieue, sur le dit matter in

equitie, deins le puruiew del dit braunch de 33. H. 8. Et secondm̃t, que le court del Exchequer chambr̃ poit bien sur le dit bill in Anglois (coment q̃ le suit fuit p proces al common ley in le court del Exchequer deuant les barons) faire decree in le case, car a cest purpose ne sont forsqz vn Court. Donque fuit moue, si le procheine puisne procheine ensuant aprez le braunch concernant le equal charging del terr̃ liable al det le Roy in les maines de chescun owner & possessor, & q̃ alcun de eux ne serra charge solement, mes touts entierment, si ceo extende a toutz les dets le Roy, et a touts executions pur leuier de eux cibñ al cõmon ley, come sur le dit act. Et fuit resolue p eux, que le dit braunch extende a touts executions pur dettes le Roy, cibien al common ley, come sur le dit act, & q̃ touts serr̃ owelm̃t extend̃ p force de cest braunch, solongz le puruiew de cest act. Fuit auxi resolue, que coñt que le obligation fuit fait pur pformance de couenants, vncore aps q̃ ceo fuit enfreint (come fuit in le case al barr̃ al temps del ensealing and deliuerie de ceo) ceo fuit vn dette al Roy per Obligation deins lact.

Trin.

Trin 41. Eliz. in Scaccario.

Le Seignior Andersons case.

ENter le Seignior Anderson chiefe Justice del Court de Common Pleas, et Sibthorpe del Melieu Temple, vn question fuit moue sur le braunch del dit act de 33. H. 8. cap. 39. cestascauoir, That all manours, lands, &c. which now bee, or that hereafter shall come, or bee in, or to the possession or seisin of any person, to whom the same manours, lands, &c. haue heretofore, or hereafter shall discend &c. in fee simple, or fee taile &c. by, or after the decease of any his or their aunceston or aunceston as heire, or by gift of his aunceston, whose heire hee is, which said aunceston or aunceston was, is, or shall be indebted to the King, or to any other person to his vse, by iudgement, recognizance, obligation, or other specialtie; That then, in euery such case, the same manours, lands, &c. shall be and stand by authoritie of this act from henceforth charged and chargeable, to, and for the payment of the same debt. Si tenant in taile del manour de D. soit lie in vn Recognisaunce a J. S. quel Recognisaunce apres deueigne al Roigne per lattainder de J. S. de haut Treason, et puis tenant in taile mozust, et lissue in taile alien la terr̃ bona fide, si le Roigne poit extender le manoz de D. in les maines del alienee. Et in cest case 4. points fuer̃ resolue per les barons, sur conference eue oue *Popham* chiefe Justice et diuers auters Justices. ¶ 1. Fuit resolue, que deuant le dit statute de 33. H. 8. si tenant in taile de terre deueigne in det al Roy per iudgement, Recognisaunce, obligation, ou auterment; et mozust, le Roy ne extendra le terre in le seisin del issue in taile: car le Roy est lie per lestatut de donis condicionalibus, come est adiudge in Plow. comm̃ in le Seignioz Barkleyes case 22. in le principal case; et oue ceo accozd, quant al point in question, resolucion del Court in leschequer, et del Court de Surueyozs in le case de Bzowne pier de Justice Bzowne cõe

est report in Plow. Com̃ 249.b. Issint vn point bien resolue, in que fuit varietie des opinions in nr̃e liures. Vide 39. Ass. pl. 18. 47. E.3.8. Registr̃ 143.& 144. Fitz. Na. Br. 217. a. et b. ¶ 2. Fuit resolue, Que si tenant in taile deueigne in dette al Roigne per receipt des deniers del Roign̄, ou autermt̃, sinon q̃ soit p iudgem̃t, recognizanre, obligation, ou auter specialtie, ⁊ morust, la terre in le seisin de lissue in taile, p force del dit act de 33.H.8. ne ꝑra extende pur tiel det le Roigne, car lestatute de 33.H.8. extend̄ solement al dits 4. cases; et touts auters dets remaine al common ley. ¶ 3. Fuit resolue, Que si tenant in taile deueign̄ indebt al Roigne p vn des 4. voies mention in le dit act, ⁊ morust, ⁊ deuãt ascũ ꝓces, ou extent, le issue in taile bona fide alien la terr̃ in taile, q̃ ore cest t̃re ne serr̃ extende p force del dit act de 33.H.8. car come appiert p les ꝑolx del dit braunch, ceo fait la terre in le possession ou seisin del hr̃e in taile solem̃t lyable v̄s le issue in taile, ⁊ nemy lalienee; Car leffect del puruiew, quant a cest purpose est, That all lands which shal be in the possession or seisin of any person, to whom the same shall discend in fee taile as heire, whose auncester was indebted to the King &c. That then, in euery such case, the same land shall be charged with the kings debt: issint q̃ p lexp̄sse puruiew del act, le terre serra solem̃t extend̄, cy long cõe ceo est in le possession ou seisin del heire in taile; car lact dit, That in euery such case the land shall be charged, ⁊ intant q̃ le terr̃ v̄s lissue in taile, ne fuit extendable deuant le dit act, le Roy ad benefit dextẽder ceo in le possession del heir̃ in taile, q̃ il ne puit deuant, mes le Roy ne poit extender in les maines del alienee, car lestatute nextend̄ a ceo; ⁊ le feasors del act ount reason a fauour le purchasor, farmor, ⁊c. del hr̃e in taile, pluis q̃ le heir̃ mesm̃, car ils sont strangers al dets del tenant in taile, ⁊ ils vient al terr̃ bona fide, ⁊ sur bone cõsideration. Auxy, la est auter clause ꝓcheine ensuant al dit braunch, le effect de q̃l est, And that our Soueraigne Lord, his heires or successors, shall not be barred, delaied, &c. to demaund and receiue their iust &c. debts against any of his subiects, as heire, or heires, &c. if any such person or persons shal say or alleage, that they haue no lands, &c. but only intailed or giuen to them by any of their auncesters to whom they be heires: issint que per cest clause auxy lentent des feasors del act appiert, que le heire in taile serra solement charge oue le dette le Roy. Mes terres in fee simple fueront extendable al common ley, in quecunq; maines que eux deuiendront, et pur ceo quant a eux lestatute ne fuit forsq; declaratiuũ antiqui iuris; mes quant al estates in taile, ceo fuit introductiuum noui iuris vers lissue in taile, et ceo, in le case al barre, fait le diuersitie des dits cases,

coment

coment que andydeux sont comoine in vn meisme sentence. Et *Popham* chiefe Justice dit, que isslint ad este resolue in Leschequier, deuant cest temps, in le case de Sergeant Nichols, pier de Sergeant que ore est, que la le terre in les maines del purchaser del issue in taile, ne serr̄ extende per le dit act de 33. H.8. pur le det que le pier del issue in taile deuoit al Roy (per vn des 4. voyes mencion in lact) mes fuit discharge per lopinion del Court del Eschequer. ¶ 4. Fuit resolue, q̄ intant q̄ le dit det, in le case al barr̄, fuit originalm̄t due al subiect, q̄ tiel det nest pas deins le dit act de 33. H.8. a charg̃ le tre in le possessiō ou seisin del heire in taile: car le dit act, quant a charger terres intailed vers lissue, extend̄ solem̄t aux dets originalment, et immediatm̄t due al Roy, per iudgem̄t, Recognisaunce, obligation, ou auter specialtie, car les poyr sont (indebted to the King, or any other to his vse by iudgement &c.) q̄ est intend̄ deste immediate det, et nemy aux dets queux fuer̄ due aux subiects, et apptaine ou accrue al Roy p reason de attaindre, vtlagarie, forfeit, done del ptie, ou per ascū auter collaterall voy ou meane, pur queux le statute de 33. H.8. ad vn clause, petit deuant le dit brauche, pur le briefe et generall manner ⁊ forme de pleadinge, in tiels cases, (pur recouerie de eux in les Courts mencion in le dit act) del pt le Roy, s̄. That the party such a yere and day did giue the same det to the King, or was attainted, outlawed, or other offence, forfeiture, deed, act or thing committed or done, by reason wherof the said debts did accrue and ought to remain, come, and be to the King. Isslint q̄ le seueral manns̄ del penninges de ceux 2. brauches manifest lentention des feasors del act, a preferrer immediate dets due al Roy per iudgement, ⁊c. deuant dets del subiects, queux accrue al Roy per assignem̄t, attaindre, vtlagar̄, ⁊c. et le reason fuit, pur ceo q̄ dets due immediatm̄t al Roy per iudgement, recognizance, obligation, ou auter specialty, sont in lour nature pluis haut, et poient este mieulx conus, et sur search troue, q̄ dets due aux subiects. Auxy quant J. N. est indet al J. S. p iudgem̄t, Recognizance, obligation, ou auter specialtie: et puis J. S. est vtlage ⁊c. p q̄ le det deueigne al Roy per lutlagarie ⁊c. in cest case ne poit este ppm̄t dit, q̄ J. N. est indet al Roy p iudgem̄t, Recognizance, obligation, ou aut̄ specialtie: car p ceux il fuit indet a J. S. ⁊ J. S. per son vtlagar̄ (que est le title le Roy) ad forfeit eux al Roy: isslint que p force del iudgement ⁊c. et vtlagar̄ le det appertaine al Roy. Et les paroyr del act sont (indetted to the K. or any other to his vse by iudgement &c.) isslint que le det, ou couient este immediatm̄t al Roy mesm̄, ou, si soit a ascun auter q̄ al Roy, ceo couient este originalm̄t al oeps le Roy.

et

et reo nest my quant le det est originalment due al subiect a son oeps demesne, et puis forfeit al Roy per act subsequent. Et issint fuit resolue, que pur tiel det le Roign̄ ne extendra ou verz la lienee del heire in taile, ou vers le heire in taile mesme: car tiels debts ne sont deins le dit act de 33. H. 8. quant a charger le heir̄ in taile, et issint remaine al common ley come debts immediatment due al Roy, que ne sont due ne per iudgement, recognisance, obligation, ne auter specialtie, come ad estre dit deuant.

Trin

Trin 42. Eliz. in communi Banco.

Buts case.

IN Replint Fishe & But, le case in effect fuit. Un seisi de Black acre in fee, & auxi possesse de white acre pur ans, p son fait grant rent hors de ambideux a vn A, a auer et perceiu a luy pur terme de son vie, ouc clause de distres in ambideux, et pur rent arere A. distreine et auowe in white acre, & si le distresse fuit bien prise ou nemy, fuit le question. Et fuit agree per totam Curiam, que le distres fuit bien prise. Et in cest case ceux points fueront resolue. ¶ 1. Que si lessee pur ans dun carue de terre, grant a vn auter vn rent hors del dit carue pur le vie del grauntee, que ceo est bone charge durant le terme, si le grauntee viue cy longement: car le graunt serra prise plus fort vers le grauntor, & ne serra void quant per ascun construction ceo poit estre fait bone (Vide Plow. Comment in Welchdens case) et in tiel case le grauntee nad que chattel. Jissint, si le lessee pur ans graunt la carue del terre al auter pur terme de son vie, il ad lentier terme, sil viuer cy longement, cibyen come in le case del deuise. ¶ 2. Fuit resolue, que quaunt rent est graunt hors de terre in fee, et hors dun terme pur ans, a auer et perceiuer al grauntee pur terme de son vie, que ceo, come estate de franktenement solonque le purport del fait, ne poit issuer hors del terme pur ans, mes hors del terre que le grauntour ad in fee simple tantolement; pur ceo que le franktenement del rent poit issuer hors de ceo, et nemy hors del chattell. Et vn entire rent ne port estre franktenement hors de Blacke acre, & chattel hors de White acre; & a faire 2. rents quant lun solement est graunt per vn al auter, serra in cest case iniurious, et le pact et mutuall

agrement

agreement des parties, ne poient charger tiel choſe oue rent, que neſt pas chargeable per la ley, come hoꝛs de hundꝛed ou aduowſon 30. Lib. Aſſiſarum pla. 5. hoꝛs dun faire, 14. Edw. 3. tiē Scire facias 122. le Countee de Kents caſe, ne rent poit eſtre graunt ou reſerue daſcun eſtate de franktenement hoꝛs daſcun auter hereditament que neſt pas mainourable, ou in poſſeſſion, reuerſion, ou per poſſibilitie, mes eſt hæreditamentum incorporeum; car pacta priuata non derogant iuri communi: et in Aſſiſe ils ne poient eſte miſe in vieu, ne aſcun diſtres poit eſtre pꝛiſe in eux. Mes, in le caſe al barre, Whyte acre eſt hæreditamentum corporeum & mainoꝛable, mes pur le exilitie et incapacitie del intereſt, que le grantoꝛ ad in ceo, ceſt rent de franketenement ne poit iſſuer hoꝛs de ceo, mes iſſera ſolement hoꝛs del terre in fee ſimple. Et in le caſe al barre, in aſſiſe poꝛt de ceſt rent, le terre in fee ſerra ſolement miſe in vieu, et ſi le grauntee accept leaſe ou graunt de Whyte acre, ceo ne ſuſpendꝛa ſon rent. ¶ 3. Fuit reſolue, que Whyte acre ſerra, durant le terme, ſubiect al diſtres del grauntee pur le rent, durant les ans, coment que le rent ne iſſuer hoꝛs de ceo, come in 46. Edw. 3. 14. quant terre eſt charge oue rent in fee, biens et chateux poient eſtre oblige al diſtres. Et fuit dit, que, intant q̄ Whyte acre eſt ſolement charge oue diſtres, ſi le grauntee pꝛiſt leas daſcun part de ceo, ceo neſt aſcun ſuſpenſion del diſtres, mes que il poit diſtrainer in le reſidue; car ceo neſt iſſuant hoꝛs del terre, mes deſtre pꝛiſe ſur le terre: come ſi ieo ay garren in auter terre, et pꝛiſe leaſe del parcell del terre, coment que le terre ſoit charge oue le garren, vncoꝛe, intaunt que ceo ne iſſuiſt hoꝛs del terre, ceo neſt aſcun ſuſpenſion. Vide 35. Hen. 5. 56. 14. Hen. 4. 6. &c. car home poit auer garren in ſon terre demeſne: iſſint il poit in mults caſes diſtreine in ſon poſſeſſion demeſne, come in 31. E. 1. tiē Diſtreſſe 64. & 7. H. 6. 3. per Curiam, vn tenant in common diſtreinera les beaſts del auter in la terre que ils ount in common, et 26. Hen. 8. fol. 5. il poit pꝛeſcribe a diſtreiner in ſon terre demeſne, mes nemy dauer rent hoꝛs de ſon terre demeſne. Si home per fait grant rent de 40. ſ. a vn auter hoꝛs de ſon manoꝛ de Dale, a auer et perceiuer a luy & ſes heires, et graunt ouſter per meſme le fait, que ſi le rent ſoit arere, que le grauntee diſtrainera in le manoꝛ de Dale (ſoit le mannoꝛ de S. in meſme le Countie ou in aut̄, et ſoit ceo graunt p vn fait ou diuers faits) le rent eſt ſolement iſſuant hoꝛs del mannoꝛ de D. et neſt que paine, que il diſtreinera in le manour de S. mes ambideux les mānoꝛs ſont charge, lun oue le rent, et lauter oue diſtres pur le rent, lun iſſuant hoꝛs del terre, et lauter deſtre pꝛiſe ſur le terre.

Et

Et si ieo graunt a vous, que vous et vostre heires distreinera pur vn rent de 40. s. deins mon mannor de S. ceo per construction in ley amountera a vn graunt dun rent hors de mon mannor de S. car si ceo ne amountera a vn graunt dun rent, le graunt serra de petit force ou effect, si le grauntee nauera forsque vn nude distres, et nul rent in luy: car donques il ne vnques aueroit Assise de ceo &c. Ceo est le reason, que est souent foits rule et resolue, que ceo amount a vn graunt dun rent, per construction del ley, vt res magis valeat, 3. E. 3. 12. 3. Lib. Ass. pla. 7. 14. Ass. pla. 14. 16. E. 3. tit Graunts 64. 18. E. 3. 32. 26. Ass. 38. 30. Ass. 12. 46. E. 3. 18. 32. 8. H. 4. 19. 9. H. 6. 9. 22. H. 6. 11. Litt 48. b. Et in tiel case le grauntee nauera briefe de Annuitie. Mes quant vn graunt rent hors del mannour de D. et graunt ouster, que si le rent soit arere, le grauntee distreinera pur mesme le rent in le mannor de S. ceo est forsque penaltie in le mannor de S. pur 3. causes. 1. Le ley ne besoigne a faire construction, que ceo amountera a vn graunt dun rent, car icy vn rent est expressement graunt deste issuant hors del mannor de D. et les parties auoient expressement limitte hors de quel terre le rent issuera, et in que le distres serra prise, et le ley ne serra exposition encounter lexpresse parolx et entention des parties, quant ceo poit estoier oue le rule del ley; Quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba expressa fienda est. 2. Si in cest case ceo amountera a vn grant de Rent hors del mannour de S. donques le grauntor serra deux foits charge; car si le grauntee port briefe Dannuitie, ceo extendra solement al mannour de D. car sur le graunt de distresse in le mannour de S. nul briefe Dannuitie gist, pur ceo que le mannour de S. est solement charge, et nemie le person del grauntour, quaunt a ceo; et a cest cause le porter del briefe Dannuitie ne poit discharge le mannour de S. dascun rent: et issint le ley, per construction encounter les parolx et lentention des parties, serra iniurie al grauntor a charger luy 2. foits. 3. Si in tiel case le mannour de S. in que le distres est solement limitte, serra in auter Countie, donques ad estre souent foits adiudge, que le rent ne issuer hors de ceo, mes le distres serroit come vn meane et remedie a coarcter le tenant del terre a paier le rent. Et fuit dit, que ne fuit ascun diuersitie in reason, que le ley in construction serra le rent destre issuant hors de ceo, quant il gist in mesme le countie, et nemy quaunt il gist in seueral Counties; car les parols in ambideux cases sont tout vn, et nest ascun reason a dire, que il faylera de

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recouerie p assise. Vide supra in Bulwers case; & les liures in 1. lib. Ass. pla. 10. & 1. Ed. 3. 21. & auters liures ne dient, que le rent issuist in tiel case hors de ambideux, mes que le terre in que le distres serra prise est charge, & ceo est voier, car est charge al distresse: et intant que ceo fuit charge al distres, lour opinion fuit, que les tenants de ambideux serra nosme in lassise. Vide les liures in 9. E. 3. 13. 31. Ass. 27. 17. E. 4. 6. 10. Ass. 4. 10. E. 3. 18. 2. E. 2. Assise 360. 1. Ass. 10. 3. Ass. 7. 32. H. 6. 27. 22. Ass. 66. 31. Ass. pla. 27. 29. E. 3. Ass. 366. Et lopinion de Finchden in 41. Ed. 3. 15. fuit affirme pur bone ley, que si le mannor de D. hors de que le rent est graunt, soit recouer per eigne title, que tout le rent est extinct, mes si le mannor de S. in que le distres est limit, soit euict, vncore tout le rent remaine. Jssint si le grauntee purchase pcell del mannor de S. le rent nest pas extinct; pur ceo que le rent issuist solement hors del mannor de D. Vide 17. E. 4. 6. semblable case. Et fuit dit, q̃ si home graunt rent hors del 3. acres, et graunt ouster, que si le rent soit arere, que il distreinera pur le rent in lun des acres, cest rent est intier, et ne poit estre rent secke hors de 2. acres, et rent charge hors del 3. acre; et pur ceo est rent secke pur tout, & vncore il distreinera pur ceo in le 3. acre. Jssint si rent soit grant a 2. et a lour heires, hors dun acre de terre, & que bien list a lun de eux et ses heires a distreiner in mesme lacre pur ceo; ceo est rent secke: car intant que ils estoient ioyntment seisie dun entier rent, ne poit este quant a vn rent secke, et quant al auter rent charge, & cest distres est come appurtenant al rent: et pur ceo, si cestuy que ad le rent morust, le survivor distreinet̃, & si ambideux graunt ouster le rent al vn, il distreinera pur ceo. Mes si home graunt rent hors de blacke acre a vn et a ses heires, et graunt a luy que il poit distreine pur ceo in mesme lacre pur terme de son vie, ceo est vn rent charge pur son vie, & rent secke apres, diuersis temporibus. Autrement est si le distresse soit limit pur certaine ans in mesme la terre, la ceo remaine rent secke entirement, pur ceo que le fee et frankt enement est secke in tiel case. Mes fuit adiudge in le case al barre, que lauowrie fuit insufficient pur diuers causes. ¶ 1. Pur ceo que in lauowrie il ne fuit mention dalcun terre forsq̃ del terre in q̃ il nad forsque leas pur ans, &. quod concessit extra terram illam inter alia quendam reddit̃ &c. ou in son auowrie il duist auer derive le rent hors del terre in fee simple solement, car hors de ceo in iudgem̃t del ley le rent pur vie fuit issuant. Et coment que le plaintife, in barre al auowrie ad disclose tout le veritie del matter in special, que in iudgement del ley fait pur lauowant, et ad fait son case

melioꝛ pur luy que lauowant ad fait pur luy meſme, vncoꝛe ceo ne fait lauowꝛie, que fault ſubſtance, bone; car lauowꝛie que eſt in le nature dun count doit conteiñ ſufficient matt̃ ſur que il poit auer iudgement dauer returne. Mes ſi lauowꝛie ou aſcun count ou replication ꝛc. fault foꝛme ou omit circumſtance de tempꝛ, lieu ꝛc. la le plea de lauter partie per ſon plea poit ſaluer tiels imperfections, meꝛ ne poit ſupplier defect del matter de ſubſtance. Vide 6.Ed.4.2.b. 6.H.7.10. 18.Ed.4.16.b. 18.Ed.3.34. Pl.Com. Barkleyes caſe 230. 38.H.6.17.18.& 19. 22.E.4.2. 5.H.7.13. 7.H.7.6.b.&c.

¶ 2. Le auowant plead le graunt hoꝛꝛ del termñ pur ans ſoleñt, & concluꝺ, virtute cuius il fuit ſeiſie in dominico ſuo vt de libero tenemento pro termino vitæ ſuæ, que eſt repugnant daũ franktenement hoꝛs dun terme pur ans. Et iſſint iudgement fuit done vers lauowant pur inſufficient pleading.

Cases de Quare impedit.

Paschæ 31. Elizab. rott̄ 141.

IOhn Hall port Quare impedit vers leuesq̄ de Bath & Wells, & Thomas Maunton Clerk dek. pur disturber luy de presenter al vicar̄ del Wollauington, appendant al Mannor del Wollauington, dōt le deane del Windsor fuit seisie in son demesne come del fee, in droit de son deanrie, & presenk Rob. Pitman son clerk, q̄ fuit institute & induct, & conuey cest Manor al Countee de Leicester per leasе pur anz, q̄l assigne tout son interest al George Sidenham Chiualer, que graunt ceo al Christopher Roll, & dur̄ son possession le vicar̄ deuient voide per le mort del Robert Pitman, & le dit Christopher Roll present vn John Dauies son Clerke al dit vicarage, que fuit admit &c. & apres le dit Christopher Roll graunt son interest in le dit leasе al pl̄, et puis le vicar̄ deuient voide per deprivation del dit John Dauies, p que il appent al pl̄ de present, & les defendants luy disturbe, al ses damages &c. A q̄ leuesq̄ plead, que il claime riens forsq̄ cōe ordinarie, & demaund iudgement si sans speciall disturbance. Et Thomas Maunton dit, que il claime riens in lauowson del vicar̄, mes q̄ il est vicar̄ del dit esglise, del presentation del dit George Sidenham, que vncore est in vie, nemy nosme in le briefe, et demaund iudgement del briefe. Le plaintife al plea del euesq̄ pria iudgement, entant q̄ il claime riens in le vicar̄, et fuit graunt, mes cesset executio tanq̄ &c. Et quant al plea del Thomas Maunton il demur̄ in ley. Et le sole question del case est, si le Quare impedit gist vers leuesq̄ et incumbent, sans nosmer del patron. Et fuit resolue, que le br̄e abater̄, & q̄ le patron doit estre nosme in le br̄, & ē pur deux causez. Primerment pur ceo que le patronage ser̄ in cest case recouer p̄s cestuy

cestuy q̃ ad riens in le patronage : ⁊ nest reason, q̃ cestuy q̃ ē patrō ſr̃ dispossesse ⁊ ouste de son patronage, qn̄t il ē estraung̃ ⁊ nient ꝑtie al bre, ⁊ nosmem̄t in cest caz qn̄t il poit estr̃ fait ꝑtie al bre. 2. Al common ley, lencumbent ne pleader̃ ascun plea q̃ cōcerne le droit del patronage, ⁊ pur ceo serr̃ incount̃ reason, q̃ il ſr̃ solem̄t nosme in le bre q̃ al common ley ne poit defend le patronage, ⁊ cestuy que ad le patronage, ⁊ que poit pleader al droit de ceo omit in le bre. Car, al common ley, chescun pleader̃ plea q̃ est apt pur luy, ⁊ ꝑtinent a son case, come in Assise vs disseisor ⁊ ten̄t ⁊c. le ten̄t pleadr̃ plea q̃ concerne le tenancie ⁊ nemy le disseisin, ⁊ lencumbent al common ley ne pleadra al droit de patronage in q̃ il nad riēz, mez a ceo le patron pleadra : et le mischiefe fuit, q̃ ꝑ le feint pleading ou confession del patron in Quare impedit, lencumbent fuit saunz remedie, cōe le liur̃ ē adiudge in 18. E. 3. 23. q̃ fuit deuāt le stat̃ de 25. E. 3. Vide 22 H. 6. 28. 9. H. 6. 30. 31. &c. mes lestat̃ de 25. E. 3. ca. 7. enable le possessor ⁊c. (q̃ est tant a dire cōe lēcumbent, aps induction, cōe ē ten⁹ in 4. H. 8. fo. 1. Dier) a count̃ pleadr̃ le title prise pur le roy, et dau̅ son rn̄s, ⁊ a mre ⁊ defend̃ son dr̃t sur la matr̃, tout soit que il claime riens in le patronage, ⁊ ꝑ equitie il pleadera vers touts cōmon ꝑsons, cōe les liurez sont in 9. H. 6. 30. 31. &c. 22. H. 6. 28. 13. H. 8. 13. 14. H. 8. 29. Vide 39. E. 3. 30. 27. E. 3. 81. 46. E. 3. 13. 19. 47. E. 3. fol. 11. 2. R. 2. Incumbent 4. 8. H. 5. 9. 7. H. 4. 34. 13. H. 4. 7. 22. H. 6. 26. 16. E. 4. 11. 2. H. 7. 14. 10. H. 4. Statham. Et ē destre obserue, q̃ touts foits, qn̄t incumbent plead in barre, il primerm̄t dit, q̃ il est persona impersonata ecclesię prædict̃ &c. ꝑ q̃ est imply, q̃ il est admit, institute, et abl̃ de plead̃ in barr̃, s̃. vs le roy, q̃ il ē admit, institute, et induct, et vz cōmon ꝑson, q̃ il est admit ⁊ institut̃, car dōq̃s est ecclesia plena & consulta vs vn cōmon ꝑson, cōe ē ten⁹ in 9. H. 6. 31. 22. H. 6. 27. 21. E. 4. 34. b. 24. E. 3. 30. 25. E. 3. 47. 38. E. 3. 9. a. 44. E. 3. 3. &c. Mes cē diu̅sit̃ in le case al barr̃ fuit prise ⁊ agree, q̃ qn̄t ꝑ le iudgem̄t in le Quar̃ imp̃ le inheritanc̃, estat̃, ou interest del patrō in le patronage ē dēe deuest ꝑ le iudgem̄t in Quare imp̃ port ꝑ J. S. la J. N. q̃ p̃sent (⁊ son clerk resceiue) couiēt ēe nosm̄ in le br̃ : mes qn̄t lenheritance, estate, ou interest del patron ne serr̃ deuest per le iudgem̄t, donq̃s, si aut̃ disturber soit nosme in le bre, ne besoigne a nosmer le droiturel patron in le bre, et oue cē diu̅sitie accordant nostre liures : car in 42. E. 3. fol. 7. a. vn port Quare impedit vers auter, le defendant dit, que il ne claime riens in le patronage, mes dit, que leuesq̃z luy present per laps, iudgem̄t si tort ⁊c. ⁊ la Belknap pria briefe al euesq̃z, pur ceo que il auer disclayme in le patronage, ⁊ le Court ne voille pas graunter ceo ; pur ceo que intant que neq̃z le patron, neq̃z leuesq̃z (q̃ in mesme le case fuit

in lieu de patron) ne fuer̄ nosme in le briefe, fuit adiudge, que le briefe abatera; et si tiel briefe serr̄ maintenable, chescun patron per couin int̄ estraunḡ ⁊ lencumbent poit ēe ouste de son aduowson: et oue ceo accordont 9.H.6.30.31.&c. 3.H.4.2.& 3. 13.H.8.13. Mes in 7.H.4.25.37. la in Quare impedit, pur ceo que le presentation fuit solement recouer et ne laduowson, ne le patrō mise hors de possession, le briefe fuit adiudge bone sans nosmer del patron. Si Quare impedit soit port vers le patron ⁊ incumbent, ⁊ le patron morust pendant le briefe, le mort del patron nabatera le br̄e, come est adiudge in 9.H.6.31. car la sont deux mischiefes; vn si briefe abatera le disturbance serr̄ dispunie, ⁊ coment que le briefe fuit bien commence, vncore le plaintife serra sauns remedie, car fault disturber: et del auter part lauter mischiefe est, si le briefe nabatera mes le plaintife proceeder̄ al iudgement et execution, le verie patron serr̄ hors de possession: ⁊ intant que in lun caz, si le droiturel patron serra mise hors de possession, il ad remedie per briefe de Droit, a recontinuer laduowson, et in lauter cas si le br̄e abater̄ le plaintife serr̄ sans remedie, quel serr̄ le greinder mischiefe, et a cest cause le briefe estoier̄, et ne serr̄ abate: ⁊ oue ceo accordont 7.H.4.26.b. 13.H.8.13. 9.H.6.57. Et Quare impedit bien commence per diuers, come coparceners ou ioyntenants ⁊c. ne abatera per le mort del vn de eux; ne Quare impedit port per baron ⁊ feme nabatera per mort la feme, pur ceo que auterment le plaintife, si les 6. moyes sont passe, serr̄ sauns remedie, come les liures sont in F.N.B. 35.b. 38.Ed.3.43. 37.H.6.11. 7.H.4.19. 14.H.4.12. 9.H.6.30.57. 1.H.5.13. 17.Ed.3.11. 7.Ed.3.304. Mes si le Roy present, et son clerk est admit ⁊ institute ⁊c. la le Quare impedit poit estre port pur necessitie vers leuesq̄ ou lencumbent, car ne gist vers le Roy, issint del pape sil vst vsurpe, 12.H.8.12. 4.H.7.15.&c. Vide 47.E.3.fol.11. Le roy port Quar̄ impedit verz Walter Dawtre desglise de Retfield, ⁊ fist son title, entant que Hammond euesq̄ de Rochester ad p̄sent al dit esgl̄ p vsurpatiō esteant void (laduowson de q̄ de dr̄t appent al 3. files et hr̄es) son clerke, q̄ fuit admit, institute, et induct, ⁊ puis lencumbent resigne, et le successor p̄sent aut̄, q̄ fuit admit, institute, et induct, et il morust, p q̄ appent al Roy a p̄sent̄, intant q̄ leuesq̄ ad gaine cest aduowson a luy ⁊ ses succ̄ sans conge, p q̄ lauowson fuit deuenus in mortmaine: le def. plead, q̄ il est parson del p̄sentm̄t de William Wyclesey predecessor leuesq̄ que ore est, Thomas per nosme, issint q̄ le patronage est in Thomas, le quel, nous intend̄, couient estre nosme in le briefe, p que nentendomuz my, q̄ nr̄e seigniour le roy a cest briefe, in quel patron nest my nosme, voille estre responde; car

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nous intendomus, que Quare impedit ne gist my deuers lencumbent sole, sans noſmer le patron, ou est expressement monstre, que la est patron que poit pleader in barre del pl. ou auter chose, de ouster le Roy del action, que ne gist in le conusans del incumbent a pleader: et fuit adiudge, que le briefe le Roy fuit bone vers lencumbent sole, pur ceo que il poit doner, per lestatute, quel respons il voit sole, in maintenance de son possession de son esglise, et le ore euesq̃ que est successor nest pas disturber, car le defendãt vient eins p̃ le predecessor, & pur ceo ne serr̃ charge oue damages ou costs. Et puis le plaintife John Hall perceiuant, in le principall case, le resolution del Court, discontinue son suit, et p̃de son presentation illa vice.

Cases de Quare impedit.

Paschæ 40. Elizab.

Sir Hugh Portmans case.

IN Quare impedit, per Sir Hugh Portman vers larcheuesq̃ de Cãterbur̃ et Mountgomerie Clerke, ad eccleſiam de Chelſey, in comitat̃ Somerſet, & fuit ſon title per reaſon dũ graũt dun procheine auoidance vnica vice, diuers points fuer̃ reſolue. ¶ Si le plaintife in Quare impedit ſoit nonſue apres apparance, ceo eſt peremptorie, & bone barre in auter Quare impedit, coment q̃ ſoit port deins 6. moyes; & le reaſon de ceo eſt, pur ceo que le defendant ſur title fait (per que il deueigne actor) auera briefe al eueſq̃ de admitter &c. ſon Clerk in meſme leſglife &c. que eſt bõe barre in auter Quare impedit, et oue ceo accord̃ 19. Ed. 4. 9. 22. H. 6. 44. 45. 33. H. 6. fol. 1. 55. 20. Ed. 4. 14. 21. Ed. 4. 2. b. &c. F. N. B. 38. b. Meſme la ley, ſi le plaintife in Quare impedit diſcontinue ſon ſuit, le defendant ſur title fait auera briefe al eueſq̃, et per conſequent̃ ceo eſt peremptorie: et oue ceo accord̃ 31 H. 6. 15. Mes ſi le briefe de Quare impedit deins les 6. moyes abate pur faux latine, ou inſufficiencie del forme, ceo eſt le default del Clerke, & ne ſert̃ perẽptorie al plaintife, ne le defendant ſur ceo auera briefe al eueſque, mes le plaintife poit auer nouel briefe de Quare impedit, et oue ceo accord̃ 3. H. 6. 3. 31. H. 6. 15. F. N. B. 38. b. Vide 34. Aſſ. pl. 9. ſemblable. Iſſint ſi le briefe abate per le miſnoſmer del plaintife ou def. ſi le pl̃ confeſſe ceo, le defendant naũa bẽe al eueſq̃, car̃ poit eſtre le default del Clerke in eſcrier de ceo: et oue ceo accord̃ F. N. B. 38. Vide 31. H. 6. 15. Mes ſi le pl̃ ſoit fait Chiualer pend̃ le bẽe le bẽe abatera, et le defendant auera bẽe al eueſque, et p conſequent̃ ceo eſt peremptorie, car (come nous veiom⁹ per common experience in ceux iours) ceo eſt lact del pl̃, et nul eſt compel ou cohert a ceo.

Trin̄

Trinitat. 27. Elizab. rott 320.

Baskeruiles caſe.

EN Quare impedit in Communi banco le caſe fuit, que, anñ priñ Mar̃, title a p̃lenť per laps fuit deuolue al Roigne al eſglíſe de Cuſep in le coũtie de Hereſ. Sir Nicholas Arnold le patron preſent vn Euans, que a ceo fuit admit, inſtitute, et induct, et mozuſt, et, ſi le Roigũ ad pard ſon titl' a p̃lenť per lapz ou nemy fuit le queſtion. Et fuit adiudge, que le Roigne ad pard ceo, car le Roigne nad que vnam & vnicam preſentationem hac vice, que ne poit eſtre extẽd al 2. auoidance: car negligence a preſenť perdẽ le ſubiect vn preſentment ſolemñt p laps, et nemy diuerſ: et ſi le Roigne ad primã & ꝓximam aduocationẽ graunt a luy, el ne poit prend le 2. Et auterment graund inconuenience enſuer̃ al patron, car le Roigne poit abſteiner de preſenter, et diuerſ permitť a preſenť, per vſurpac̃ lun aps auť, et p̃nder ſon tourne qñt el voit, et le patron poyt eſtre in manner per ceo diſherite. Et leſtatute de Prærogat̃ Regis, quod nullum tempus occurrit regi, eſt deſtre intend, qñt le Roy ad eſtate ou intereſt certaine et permanent, et nemy qñt ſon intereſt eſt ſpecialiñt limitte, quant et coment il ne prendra, et nemy auteriñt; car la temps eſt le ſubſtance de ſon title, & in tiel caz de tẽps, occurrit regi. Et iſſint fuit auterfoits adiudge Paſc. 28. El. Rotť 412. in Communi banco, inť Beuerly pl', et larcheueſq̃ de Cãterburie, et Gabriel Cornwal def, pur leſglíſe de Somby, in coñ Lincolne.

Hill'

Hillar̃ 43. Elizab. in Communi *Banco, rott'* 1108.

Maunds caſe.

IN Repleuin inter Maunde et Gregozie le defendant mẽe, que vn rent charge, hoꝛs dun meaſe et certaine tres, fuit graunt per fait a vn ꝛ a ſes aſſignes, pur ſon vie, pro conſilio impendendo, paiable annuelm̃t al 4. feaſts, ꝛ pur default de paim̃t, ſi ſoit demaund, q̃ ſerr̃ loyal al grauntee et ſez aſſignez a diſtreiner, le grã=tee aſſigne le rent al auowant, le ten̄t attoꝛne, laſſignee ſur le tre demaund le rent puis le iour, et pur default de paiment diſtraine ꝛ auowe, ſ̃ q̃ le pl̃ demurr̃ in ley. In cẽ caſe fuit reſolue. ¶ 1. Que rent graunt a vn ꝛ ſes aſſignes, pro conſilio impendendo, poit eſtre aſſigne ouſter p̄ lexp̄s paroꝛ del grauntoꝛ, que graunt ceo a luy ꝛ ſes aſſignes; car modus & conuentio vincunt legem. ¶ 2. Que in ceſt caſe ne beſoigne pur laſſignee a demaunder le rent al iour, come il doit in caſe de reentrie (car la tout lentereſt ou eſtate ſerr̃ defeat) ou q̃n alcun ſumme nomine pœnę ſerr̃ foꝛf. in ambideux ceux caſes demaund couient eſtr̃ fait pꝛeciſement al iour, vn conuenient temps deuãt le coucher del ſoliel, in lun caſe in reſpect del condic̃, ꝛ in lauꝛ in reſpect del penaltie. Mes, in caſe de diſtreſſe, ceſtuy que ad le rent poit demaunde ceo a q̃l tẽps q̃ il voit, car nul p̄de ou penaltie ſur ceo inſuera, mes ſoleñt remedie a bener a ſon rent q̃ eſt arere, et q̃ ẽ due a luy: et iſſint fuit adiudge in Communi banco, Mich. 40. & 41. Eliz. inter Stanley et Read, ou le caſe fuit, q̃ vn rent charge fuit graunt, paiable a certaine iour, ꝛ ſi ceo ſoit a=rere ꝛ demaunde q̃ bñ lirroit al grauntee a diſtrainer; lauowant monſtre, com̃t q̃ il fiſt demaunde al iour, le pl̃ trauers, q̃ il ne fiſt demaund a m̃ le iour (entendant a faire le iour parcel del iſſue) ſur q̃ le def. demurre in ley, et fuit adiudge encounter le pl̃; car ſi le de=maund fuit in alcun temps puꝛ le iour ꝛ deuãt le diſtreſſe, ſuffiſt. ¶ 3. Fuit reſolue, que ſi home q̃ ad rent ſeck, payable annuelmẽt

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al feast de Pasche, ad vn foits seisin del rent, & le feast de Pasche passe, & nul tend ou dd fait del rent, il poit, com̄t q̄ soit aps le iour de paym̄t, veign̄ al t̄re, & la dde le rent, et, com̄t q̄ ten̄t del terre ne soit la, vnc̄, sur tiel demaund si nul soit prist a paier le rent, c̄ est denier in ley, sur q̄ cestuy q̄ ad le rent auer̄ Assise, intant q̄ nul penalty sur ceo insuera, mes solem̄t dau̅ remedie de recouer son rent et les arrerages, oue damages & costs, & oue c̄ accord Litt̄ fol. 51. & liure Dentries fol. 79. b. 29. Ass. p. 52. Mes in mesme le case, si le ten̄t soyt al darreine instant del feast de Pasche prist sur le t̄re a payer le rent, & cestuy q̄ ad le rent ne ascu̅ pur luy vient a demau̅der ou receiu̅ ceo, la cestuy q̄ ad le rent ne poit ven̄ in absence del t̄re ten̄t & dde ceo, & issint faire luy vn disseisor, et rend damag̃ & costs sans ascu̅ default in luy: Mes in tiel case, cēy q̄ ad le rent, pur ceo que default fuit in luy, doit fair̄ dd de ceo sur le t̄re al ꝑson del tenant, & sil ne poit luy trou̅ sur ascu̅ ꝑt del t̄re hors de q̄ le rent ē issuant, donq̄s in tiel case il couiēt dder le rent al ꝓcheine feast de Pasche due touts les arrerages, et com̄t q̄ c̄ soit in labsence del ten̄t, vnc̄ c̄ amounta a vn denier in ley, & sur c̄ cestuy q̄ ad le rent recou̅a touts les arrerages, damages, et costs.

Dis-

Discontinuance de proces, &c. per mort la Roigne.

Trinit. 1. Iacobi.

LE resolution des Justices puꝫ le mort le roigñ Elizabeth concernant discontinuance dez proces &c. Sont deux manners de resummons & reattachments lun generall, lauter special. Leffect de generall est, que le Roy direct briefe (exempli gratia) al bank le Roy in cest forme, Mandam⁹ vobis, quod ad sectam nostram omniumque ligeorum populi nostri, qui prosequi voluerint extra & super omnia siue aliqua recorda, placita, breuia, præcepta, processus, billas, loquelas, appella, fines, & alia memoranda quæcunque in curia nostra coram nobis existentia, vel in posterum coram nobis prouentur̃, omnimoda breuia resummonitionum, reattachiamenť, & omnium aliorum processuũ pro nobis & dictis ligeis populi nostri in hac ꝑte habend', secundum bonas intentiones & proposita subscript̃, mutatis mutandis, prout casus requirit, secundum discretiones vr̃as adiudicetis. Speciall resummons est de tiel forme. Rex vic' Salutem. Resummoneas per bonos summonitores A.B. qd' sit corã nobis in cr̃o &c. vbicũq; tunc fuer̃ in Angl', audit̃ record' et iudiciũ suũ de loq̃la quę fuit in cur̃ dñi Henr̃ nuper regis &c. ita quod loquela illa tunc sit in eodem statu quo fuit in pristina curia prædicti nuper regis in octabis &c. vltim̃ præterit̃, de quo die loquela prædicta adiornat̃ fuit vsq; &c. tunc proxim̃ sequeñ, ante quem diem loquela prædicta remansit sine die, eo quod prædict̃ nuper Rex diem suum clausit extremum. Et nota sur le generall resummons loriginall et le issue (si ascun soit ioine) est reuiue, car ceo est pleine record, et doit estre entre, mes le proces deuant le issue ioiñ, ne le vouch. ne le garnishm̃t, &c. ne ꝫr̃ reuiue sans especial br̃ recitãt tout le special ꝓceeding. 5. H. 7. 40. 9. H. 6. 41. 13. E. 4. 1. 1. E. 5. fo. 2.

Et

Et appiert per le liure de Entries tit̄ Reattachment 499. que si issue soit ioyne, & Jurie returne, & iour done pur triall, deuant q̄l iour le Roy morust, vncore per speciall resummons tout serra reuiue, car le Jurie fuit returne de record, & le record de ceo fuit fait pleiñ & perfect: & oue ceo accord̄ 3. Ma. 118. Dier. Vide 21. E. 3. 44. contr̄ in case de aide prier, car la le Jurie nest reuiue come la est ten⁹, mes Venir̄ fac' de nouo serr̄ agard. Et est ascauoir, q̄ le def. ne vnq̄ auer̄ resummons ou reattachm̄t, pur c̄ q̄ il nauoit ne poit auer summons ou attachm̄t: et pur c̄, al cōmon ley, si vn verdit vst passe pur le def. & deuant le iour in bank le roy morust, in cē caz le pl' est discontinue, & le def. poit p̄ Certiorari remoue le record, & com̄t que les parties ne vnq̄s pleadr̄ ascū plea, vnc̄ le def. couient suer Scire fac', et ß c̄ dañ iudgem̄t, mes sans Scir̄ fac' il nauer̄ iudgement, pur ceo q̄ les parties noūt iour in court, & le Scir̄ fac' reuiūa le record, & donera iour al parties, encoūt̄ lopinion de Littleton 10. Ed. 4. 13. com̄t q̄ il dit que issint fuit adiudge, q̄ le defendāt in tiel caz maintenant aueroit iudgem̄t. Mes al common ley per le demise le Roy le plea fuit discontinue, & le proces q̄ fuit agard, & nient returne deuant le mort le roy fuit p̄de: car p̄ le br̄e del p̄decessor rien poit estre execute in le temps del nouel roy, sinon q̄ il soit in especiall cases; car p̄ le mort le roy, non solem̄t les Justices de lū bank & de laur̄, & Barons del Exchequer, mes les viconts auxy & eschetors, et touts Commissions de Oyer & Terminer, goale deliuery, & Justices de Peace, sont determine per le mort le predecessor q̄ eux fist: & pur le remedie de ceo fuit lestatute de 1. Ed. 6. cap. 7. fait, que puruieu que per le demise le Roy ascun action, suit, bill, ou plaint, that shal depend betweene partie and partie in any of the kings Courts, and other Courts of record, shall not in any wise bee discontinued or put without day, but that the proces, pleas, demurrers, and continuances, shall stand good and effectuall, and bee prosecuted and sued forth, in such manner and forme, and in the same estate, condition, and order, as if the same king had liued. Issint que ore, si ascun iudiciall briefe ou proces in ascun court de record fuit agard in temps del p̄decessor, ceo ore poit estre execute in temps del successour, 1. Elizab. 165. accordant. Mes vncore cest act nad prouide remedie pur touts les mischiefs. Car ¶ 1. si le originall ne soit returne deuant le mort le Roy, ceo est p̄de, car les parolx sont dependant in ascun Court: mes, in Appeale de mort, si le briefe soit deliuer al vicont deins lan, et deuant le returne de ceo, ou q̄ le vicont ad fait riens, le Roy soy demist, et lan expire deuant le iour del returne, in cest case le common ley donera remedie al plaintif, s̄. vn Certiorari al vicount retournable in bank le Roy, & sur ceo

1. El. Dier 165.
1. E. 4. 3.
1. E. 5 1.
4. E. 4. 44.
1. H. 7. 2.

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le pl̃ auera reattachment, coment que ceo ne vient eins per le returne del viĉ mes per Certiorari; et le reaſon eſt, pur neceſſitie del matt̃, car autrement le plaintife, que loialment purchaſe ſon bꝛe deins lan, ſans aſcun default in luy, perdꝛa ſon appeale lan eſteant oꝛe paſſe, et pur ceo intant q̃ per act in le ley bꝛe eſt diſcontinue, le ley donera meane a reuiuer ceo, au fine que le partie ne ſ̃t ſauns remedie. Iſſint ſi home purchaſe Formedon vers pernoꝛ des pꝛofits deins lan apꝛes title accrue, ſi deuant le returne del bꝛiefe ꝛc. le Roy ſoy demiſt, le bꝛ̃ ſerꝛ̃ remoue in le Common bank per Certiorari, et ſur ceo il auera reſummons, pur le miſchief, coñ eſt tenus 10.E.4.13.b. & 14.a. ¶ 2. Per le moꝛt le Roy les offices de vicõts ſont determine, et pur ceo tanꝛ nouels patents de lour offices rien poit eſtre fait: mez in Londꝛes et auters lieuz ou ſont viĉ de inheritance per chꝛ̃e, la ils poient execute aſcun pꝛoces ou iudiciall bꝛ̃e agard in temps del pꝛedeceſſoꝛ. ¶ 3. In le countie Court et autiels Courts, queux ne ſont Courts de recoꝛd, ceo remaine come fuit al common ley, car les paroix del act ſont, in any of the kings Courts, or other Court of Record. Auxy leſtatute extend ſolement al actions, ſuitz, ꝛc. inter party et party, et pur ceo, ceo nextend al caſes ou le Roy eſt partie: et oue ceo accoꝛd Stamf. 98.b. et pur ceo eſt neceſſarie a ſcauer, q̃ le common ley eſt in tielz caſes. Si infoꝛmation de intruſion, ou auter infoꝛmaĉ ſoit pꝛeferre, ou merement pur le Roy, ou tam pro dño rege quam pro ſeipſo, et le defendant plead al iſſue, ou demurrer ſoit ioyne, et pu͡z le roy moꝛuſt, tout eſt abate et pdue, foꝛſq̃ ſolement le infoꝛmation, et ceo eſtoiera: car lentrie in Leſchequer eſt (monſtrant le continuance et moꝛt le roy H.8.) per quod loquela remanſit ſine die, & dominus Edwardus ipſum nuper regem in regimine huius regni ſucceſſit, ac regimen eiuſdem regni ſuper ſe aſſumpſit, ſuper quo concordatum, quod prædict̃ defendens attachietur de nouo ad reſpondend̃ dicto domino regi nunc, et ſur ceo attachmẽt eſt agard, ſur le returne de quel le defendant appiet̃ et pleadet̃ de nouo: car coment que voier eſt, q̃ le roy in genere ne moꝛuſt (car eſt nul interregnum) vncoꝛe in hoc indiuiduo, ſ̃. Henry le Roy, et Edward le Roy ꝛc. moꝛuſt. Et ceo appiert per recoꝛd Hill' anno 6.Ed.6, Rot̃ 50. Infoꝛmation de intruſion fuit pꝛeferre vers John Schꝛymſal eſq. pur intruding in le Mannoꝛ de Okeley, in le countie de Staffoꝛd. Simile recordum Michael' anno 6.E.6.Rot̃ 15. infoꝛmation pꝛeferre p Attourney le Roy pur le Roy ſolement vers Michael Harecourt ſur leſtatute de Maintenance: Hill' 5.E.6.Rot̃ 23. in Scaccario in infoꝛmation ſur leſtatute de 32.H.8. pur buying de titles, tam pro dño rege quam pro ſeipſo, et apꝛez iſſue le roy moꝛuſt, et def. appiert ſur

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le attachment, et plead de nouel: ſimile p idem Recordum Roſ 24. ſimile per idem Recordum Roſ 54. ſimile Mich. 1. & 2. Ph. & Mar. in Scaccario Roſ 131. in inſormation de intruſion vers Rich. Alſord, que appiert ꝛ plead vn ſpeciall plea, ſur que fuit demurē in ley, ꝛ le demurē enter ꝛ puis le roigne Mary mozuſt, ꝛ ſur ceo Subpena iſſuiſt dappearer de nouo, retoznable termiñ Hill' 1. Eliz. que eſt in ligula breuium ibidem, ꝛ ſur ceo le defend̄ plead auk ſpeā plea, ſur que iſſue fut pꝛiſe. Et nota a tiel effect come les pꝛeſidents ſont in leſchequer, iſſint ils ſont auꝛi in bāke le roy, quāt a touts manners de inſoꝛmations. Simile Paſche 5. E. 6. Roſ 38. ou in populer action le roy mozuſt apꝛes demurē ſur le euidenē, et deuāt iudgement, ꝛ le def. plead de nouo. Sur queux recoꝛd̄ le ley appiert deſtre, q̄ in touts les ditz caſes le roy eſteant mereñt party, ou quant le inſoꝛmation eſt tam pro dño rege quam ꝓ ſeipſo, quant le roy mozuſt deuant iudgeñt, tout le ꝓceeding ſur le inſoꝛmation eſt tout ouſteñt abate ꝛ pde, quia rex Henricus &c. fuit pars qui mortuus eſt: meſ le inſoꝛmation ou inditeñt, que eſt recoꝛd pur le roy eſtoiera, ꝛ le def. ſerē chaſe a reſponder a ceo de nouo, ꝛ riens eſtoieē ſoꝛſq̄ le inſoꝛmation, car ceo eſt recoꝛd ꝛ ne poet abater. Et le ley ad graund reaſon in ceo, car ſur pluſoꝛs penall ſtatutes le ſuit eſt deſtre commence deins certaine temps, et pur ceo, ſi le inſoꝛmation ou inditement ne continueē in coꝛce apꝛes le moꝛt le Roy, loffence ſerra diſpunie per le moꝛt le Roy, qne eſt le act de dieu. Meſ ſi le roy poꝛt oꝛiginall bꝛiefe come de Quare impedit &c. la per le moꝛt del roy le bꝛiefe abateē, quia le roy pur que iudgement ſerra done, eſt moꝛt, et apꝛes le moꝛt le roy, que eſt partie, nul pꝛoceſſe poet eſtre agard ſur le oꝛiginall, come poet eſtre ſur le inſoꝛmation on enditement. Vide Michaeł 3. & 4. Elizab. 206. Vide 4. Edw. 4. 43. & 44. & Brooke tiē Offices 25. Si vn ſoit indite in temps del vn roy et plead al iſſue, et puis le roy mozuſt, il pleadꝛa de nouo, come poies veier in le caſe de Edward Smyth, que plead al iſſue ſur inditement de felonie in Mid̄ in 3. & 4. Phil. & Mar. in banke le roy, et puis le moꝛt le roigne Marie replead in 3. & 4. Elizab. et fuit acquite. Iſſint Clement Palmer eſteant arraigne in banke le roy ſur vn nonſuite in appeale al ſuit le roigne Trinitaē 4. & 5. Phil. & Mar. et plead al iſſue, le roigne Marie mozuſt, & Michaeł 1. & 2. Elizabeth. il replead. Vide Paſche 1. Edward. 5. trauers dun office in le Chauncerie, et le recoꝛd miſe in banke le roy, et puis le Roy mozuſt. Et per le dit ſtatute de 1. Edward. 6. eſt purvieu, That in all caſes, where any perſon or perſons heretofore haue been, or hereafter ſhall be found guiltie of any manner of treaſon, murder, man-

slaughter, rape, or other felonie whatsoeuer, for the which iudgment of death shall or may ensue, and shall be repried to prison without iudgement &c. that the Iustices of Gaole deliuerie, shall haue full power and authoritie, to giue iudgement of death against such person so found guiltie and repried &c. Deuant ceste act, al cõmon ley, si home ad estre indite & conuict p verdit ou confession deuant ascun commissioners, & deuant iudgement le roy mourust, in ceste case nul iudgement puit auer estre done; car le roy, pur que iudgement serra done, est mort, & lauthoritie de les Judges, que doner le iudgement, est determine: et ceste act remedie ceux speciall cases; mes touts suits le roy per originall, bill, information, ou inditement pur ascun auter offence remaine al common ley.

Michaelis

Mich. 2. Iacobi.

Caſe de fine leuy per le Roy tenant *in taile, &c.*

LE Roy fuit infozme, q̃ diuers mãozs ꝛ terres fuer̃ intaile al Gilbert de Clare countee de Gloſ̃, ꝛ le Roy, q̃ oze eſt, eſt heire del cozps del dit Gilbert inheritable al dit tre, alcũ de q̃x mãozs le Roy ꝛ auters de ſes pzogenitozs, pur bone conſiderac̃, ount grant a diuers ſubiects, touts queux grants (come fuit pzetend) fuer̃ in reſpect del dit auncient eſtate taile ouſterin̄t void. Le Roy que oze eſt, de ſon grace ꝛ bone volunt a ſes ſubiects, ꝛ pur lour quiet ꝛ repoſe, require Popham chiefe Juſtice ꝛ Coke lattozney generall, a conſider coment p ley il poet eſtablier leſtate des dits patentees ꝛ auters claimant deſouth eux, encounter le dit eſtate taile. Sur q̃ ils ſeueralm̄t in le vacation temps conſider ſur ceſt point, ꝛ puis, ſur conference, ils agreont in vn, que le Roy eſteant tenant in taile p done fait a alcun de ſes auncеſtozs eſteant ſubiects (come le queſtion eſt moue) poet, p fine leuie ſur grant ꝛ render, barre leſtate taile; ꝛ ceo pur diuers reaſons. ¶ 1. Imtant q̃ le Roy eſt lie per leſtatute de donis conditioñ, come eſt adiudge in le ſeignior Barkleys caſe, in Pl.com. 240. p quel act le roy eſt reſtraine de alienation, car eſt purvieu p meſm̃ le act, quod finis ipſo iure ſit nullus, reaſon voet q̃ le Roy pzendza benefit del acts de 4. Hen. 7. & 32. H. 8. q̃ inable tenant in taile a barrer ſes iſſues: car eſt agree in tout noſtre liures, q̃ le Roy pzendza benefit dalcun act coment q̃ il ne ſoit noſm̃, 12. H. 7. 21. 35. H. 6. 60. Seignior Barkleys caſe. Pl. com. 240. ꝛ ſerra dure, que le Roy, eſteant iſſue in taile dun done fait al ſubiect, ſerra in peioz condic̃, q̃ ſil nad eſtre Roy. ¶ 2. Eſt graund diuerſitie, quant le Roy claime in reſpect de ſon naturall capacitie, come heire de cozps, p fozmam doni come heire del cozps dun ſubiect, car la il ſerra ly p vn act de parliam̄t, (ꝛ ceo fuit le pzincipal reaſon del iudgem̄t in le caſe del ſeignioz Barkley, ou le done

fuit al roy H.7. & as heires de son corps.) Et quant le roy claime chose in respect de son royall & publique capacitie, la vn generall act ne liera luy, sinon q̄ il soit expresm̄t nosm̄, sinō q̄ il soit in espec̄ cases. ¶ 3. In le case al barre, le barre q̄ lestat̄ de donis condic' operat̄, est vers les issues in taile; car tenant in taile mesm̄ sans laid del act poet barrer luy mesm̄ (& issint poet le Roy auxi per spec̄ grant.) Donq̄s les issues in taile, al tempz del fine leuie p le roy, sont forsqz subiects q̄ux sont lie p lez ditz actz, & lestate taile barre p le fine & pclam̄. Et nota, q̄ le act de 32. H. 8. recite, q̄ (for auoyding of all strifes and controuersies) quel paroll generall (all) include auxi le case del roy. Et fuit obserue, q̄ lestatute de donis cōditioñ, q̄ lia le roy, dit, quod dominus Rex perpēdens, quod necessariū est in casibus prædictis ponere remedium, statuit, quod voluntas donatoris &c. & lestatute de 4. H. 7. que done poyar a docker lestate taile dit, The king considereth that fines ought to be of greatest strength to auoid strifes and debates, and to be a final end and conclusion: It is enacted that after the fine engrossed and proclaimed &c. the same fine shal conclude priuies &c. deins queux parols, les issues le roy sont include. Auxi lestatute de 32. H. 8. puruieu, That all fines leuied of any lands intailed to the person so leuying the same fine, or to any of his ancestors &c. et Gilbert de Clare fuit in proprietie de speach auncestour al roy, et issint deins lexpres letter del act. Mes semble a eux q̄ apres le render fait est necessarie dauer lr̄es patent̄, a graūt̄ al conisee, p expres parols, q̄ il poet enter in la terre: car autermt̄, le fine esteant executorie sur graunt et render, poet estre doubt, si le conusee sans ascun tiel graunt poet enter sur le roy. Et puis Mich. 5. Iacobi apres le mort de Popham, cest opinion, sur consideration & conference ewe oue Fleming & Coke chiefe Justices et Tanfield chiefe baron, fuit affirme pur bone ley, pur les reasons et causes auandits. Et diuers fines ont estre leuy p le roy accord̄ a cest resolution.

Neuils

Michaelis 2. Iacobi.

Neuils caſe.

En meſme ceſtuy terme ceſt caſe per maundement le Roy fuit propound a touts les Juſtices. Anno 21. R. 2. Rafe Neuill ſeignior de Raby fuit per lees patents deſouth le grand ſeale create counte de Weſtmerland a luy & a les heires males de ſon corps, quel Rafe p Margaret Stafford ſon primer feme ad iſſue Rafe counte de Weſtmerland, a que Charles ia des counte de Weſtmerland fuit lineall heire male del corps del dit Rafe le primer donee; & le dit Rafe le primer donee p Joan file de John de Gaunt duke de Lancaſtre auoit iſſue George ſeignior Latimer (car touts ſon eigne freres ſont morts ſans iſſue male) de q eſt lineal iſſint diſcend Ed. Neuill, q ore eſt le plus prochein iſſue male al dit donee: et puis Charles counte de Weſtmerland fuit attaint per vtlag & per parliament de haut treaſon & deuie ſans iſſue male, et ore le dit Ed. Neuill claime deſite counte de Weſtmerland. Et in ceſt caſe 3. queſtions fuere moue a touts les Juſtices denglitere. ¶ 1 Si le dit limitation del dit dignitie al dit Rafe et ſes heires males de ſon corps ſoit deins leſtatute de donis conditionalibus, ou fee ſimple conditionell al common ley. ¶ 2 Admittant q ceo fuit eſtate taile deins le dit ſtatute, ſi per lattainder de treaſon leſtate taile fuit forfeit, per vn condition in ley tacite annexe al ſtate de dignitie. ¶ 3 Si leſtate de dignitie fuit forfeit p lact de 26. H. 8. ca. 13. ou que le dit Ed. Neuill come heire male del corps del primer donee doit eſtre counte de Weſtmerland. Et ceux points fuer argue et debate al Serjants Inne in Fleetſtreet per le attorney le Roy, et per le councell del dit Ed. Neuill. Et quant al primer fuit obiect que le dit dignitie ne fuit deins le ſtatute de donis condition pur diuers cauſes: 1. pur ceo que ceo fuit vn grand dignitie deriue del roy come le fountein de

tout dignitie, ⁊ pur ceo nest deins le dit act, q̃ parle solem̃t de tenementis, quæ multotiens dantur sub conditione, viz. cũ aliquis terrã suã dat alicui viro &c. issint cest dignitie ne poet estre include deins cest parol tenem̃ts ou tr̃e. 2. Lestatut dit, in omnibus p̃dict' casibus post prolẽ suscitat̃ huiusmodi feoffati habuer̃ potestat̃ alienãdi &c. mes cest dignitie fuit inherent al sanke del donee, ⁊ ne poet estre alien ou graunt, ne puis, ne deuant issue, ⁊ pur ceo tiels cases de dignitie fuer̃ hors del mischiefe, les parols, ⁊ lentention des feasors del act de donis condit̃; ⁊ lopinion in Manxels case vn Pl' com. grant de chose, q̃ ne concerne terr̃ ou tenem̃ts ne exercible in terr̃ ou tenem̃ts, come vn annuitie, q̃ est p̃sonel, nest deins lestat̃ de donis condit̃, et cest dignitie fuit dit fuit p̃sonall ⁊ annex al sanke del donee, ⁊ p̃ conseq̃ns ne poet estre intaile deins le dit act. Mes fuit resolue p̃ toutz lez Justices dẽgliterre, q̃ nosme de dignitie poet estre intaile deins le dit statute; car in le case al barre ceo concerne terre, car il fuit fait p̃ lez ditz lr̃es patents countee de Westmerland, q̃ p̃ le cõmon ley est grand conseruator del peace, ⁊ Sherifs sont appell vicecomites, pur ceo q̃ in auncient tempz ilz fuer̃ come deputies al coũtees, com̃t q̃ ore ceo est chaũge: ⁊ pur ceo tiel office de dign̄ dascũ lieu cõcerne tr̃e, ⁊ pur ceo poet estre intaile deins le dit stat̃, come est dit in Pl' com. in le dit case de Manxel. Loffice de Steward, Receiuor, ou Bailife de tiel mañor poet estre entaile deins le dit stat̃, pur ceo q̃ est exercible deins terre: 5. E. 4. loffice de Marshall dengliterre fuit intaile, 1. H. 7. 28. estate taile poet estre dũ fostership, 18. E. 3. 27. office de seriãcie ou custody del esglise de Nichol fuit intaile; 32. H. 6. 28. le coũtee de Salop fuit entaile al John Talbot chlr̃e, ⁊ a les heires males de son corps; ⁊ ieo ay vieu vn br̃e de p̃liam̃t in añ 27. H. 6. p̃ q̃ Bromstet fuit sũmõ al p̃liam̃t p̃ le nosm̃ de seignior Vesey, oue limitat̃ in le br̃e a luy ⁊ les heires males de sõ corps. Et est ascauoir, q̃ sicome in aũciẽt tẽpz lez Senators de Rome fuer̃ elect a censu, of their reuenues; issint icy in aũciẽt tẽpz in cõferring de nobilitie respect fuit ewe a lour reuenues, p̃ q̃ lour dignity ⁊ nobility poet estre supported ⁊ maintained: ⁊ pur c̃ vn chiualer doit auer xx. l' tr̃e p̃ annũ, vn barõ xiij. fees de chiualer ⁊ vn quarter, vn coũtee xx. fees de chiualer (car ne fuit ascũ duke deins Englit̃re, del tẽpz del cõquest iesq̃z 11. E. 3. ⁊ le duke de Cornwall fuit le primes duke puis le cõquest deins Englit̃re.) Et c̃ appiert p̃ le stat̃ de Magna Charta cap. 2. car touts foits le 4. part de tiel reuenue, q̃ est requisite p̃ ley al dignitie, serra paie al Roy pur reliefe: come le reliefe dũ chiualer est v. l', q̃ est le 4. part de xx. l' q̃ est le reuenue dũ chiualer; ⁊ le reliefe dũ barõ est C. marks, q̃ est le 4. part de son reuenue, s̃ 400. marks, ⁊ include 13.

feods

feods dũ chiualer ⁊ vn quarter; ⁊ le reliefe dũ coũtee eſt C.ℓ, q̃ eſt le 4. part de 400.ℓ q̃ eſt le reuenue dũ coũtee. Et appiert p̃ les recoꝛds del Eſchequer, q̃ le reliefe dũ duke amoũteꝫ a 200.ℓ, ⁊ p̃ cõſequence ſon reuenue doit eſtre 800.ℓ p̃ annũ. Et ceo eſt le reaſon in noſtre liures, q̃ cheſcun del nobilitie eſt p̃ſume in ley dauer ſufficiẽt franktenemẽt, ad ſuſtinendũ nomẽ & onus. Vide 3.H. 6.48. 11. H.4..15. 14.H.6.2. Vide le counteſſe de Rutlands caſe, in le 6. part de mes reports. Vide Cambden fol.107. Necdũ hæreditaria fuit hæc dignitas (ſcilꝫ comitis) verũ cũ Gulielmus Normanus, iam victor, ſummã rerũ in hoc regno adminiſtraret, comites creati ſũt feudales, hæreditarij, & patrimoniales, vt in antiquis cartis videre eſt, de tertio denario comitatus, i. qui de placitis proueñ in eodem comitatu. Et cheſcun baron ⁊ auk de nobilitie eſt toutz foitz create daſcun lieu. Et oꝛe, a quel value leꝫ ditz aũciẽt rents in tẽpꝫ H. 3. & E.1 a eſt iour amoũteꝫ, cheſcũ ſcauoit. Et iſſint fuit clereñt reſolue. q̃ le dignity in le caſe in queſtiõ fuit deins leſtaꝫ de donis condiꝫ. Et oue ceſt reſoluꝫ accoꝛd̃ diuers p̃ſidentz ⁊ lexperiẽce ⁊ ꝓactiſe toutz foitz vſe: car le coũtee de Noꝛthũbeꝫ fuit intaile, p̃ le roigne Mary, al Thomas Percy ⁊ a les heires males de ſõ coꝛps, ⁊ pur default de tiel iſſue, q̃ Hẽry ſon freꝫ ſerꝫ coũtee, a luy ⁊ a leꝫ heirez malez de ſon coꝛpꝫ; ⁊ in tiel caſe. p̃ lattaindꝛe de Tho. de treaſon, Hẽrie fuit puis ſon moꝛt coũtee de Noꝛthũb. p̃ foꝛce de ſon reñ, ⁊ ſon iſſue enioyẽ a tẽ iour. Iſſint Ambroſe Dudley fuit, p̃ le roigne Elizabeth, create coũtee de Warwicke, a luy ⁊ a les heires males de ſon coꝛps, et pur default de tiel iſſue, q̃ Ro. ſõ freꝫ ſerꝫ coũtee, a luy, ⁊ a leꝫ heirs males de ſon coꝛps: ⁊ Rob. fuit create coũtee de Leiꝫ, in taile oue tiel limitaꝫ a ſon freꝫ Ambroſe: ⁊ multz auꝛ p̃ſidẽts ſont a meſm̃ leffect. Quãt al 2. point fuit reſolue, q̃ comẽt ceſt dignity ſoit deinz leſtaꝫ de donis conditiõ, vncoꝛe p̃ lattaindꝛe de treaſõ (ſi leſtatuꝫ de 26.H.8. nauoit eſtre fait) ceſt dignitie ad eſtre foꝛfert, p̃ foꝛce dũ condition in ley tacite annexe al eſtate de dignitie: car ceux que ſont counteeꝫ ount office de graund truſt ⁊ confidence, ⁊ ſont create pur 2. purpoſes: 1. ad conſulendum regi tempore pacis: 2. ad defendendũ regẽ & patriã tẽpore belli: ⁊ pur ẽ antiquitie ad done eux 2. enſũgnes a reſembler ceux deux duties: car p̃mieriñt lour teſte eſt adoꝛn oue vn cappe de honoꝛ ⁊ coꝛonet, ⁊ lour coꝛps oue vn robe in reſemblance de coũſel: ſecondiñt ilz ſont ſuccinct oue vn eſpee in reſemblãce, q̃ ilz ſerꝫ foiall ⁊ loyal a defender lour p̃ince ⁊ pays: et de ambideux ceux Bracton ple in ſon 1. liure cap. 8. Comites, viz. ſiue a comitaꝫ ſiue a ſocietaꝫ nomẽ ſumpſeꝫ, qui etiã dici poſſunt conſules a conſulendo; reges enim tales ſibi aſſociãt ad cõſulẽdũ & regẽd' populũ Dei, ordinãtes eos in magno honore & poteſtaꝫ, & nõie,

quando

quando accingunt gladijs, i. ringis gladiorum: per que appiert ceux 2. fines, s. counsell & defence. Donques quant tiel person encont le dutie & fine de son dignitie, prist non solem̄t coūsell mes armes auxy encont le Roy a luy destroyer & de c̄ est attaint p̄ due course del ley, per ceo il ad forfeit son dignity per vn condicion tacite annexe al estate de dignitie, in mesm̄ le manner come si teñ in tayle dun office de trust misuse ou non vse ceo, ceux sont forfeitures de tiels offices a touts iours per force dun condicion in ley tacite annexe a lour estates, come est tenus in 11. E.4.1. 20. E.4.5.6. 39. H.6.32. 22. Ass.34. 8.H.4.18. 2.H.7.11. 14.H.7.1. Pl.Com.370. Neuils case. Quant al 3. point fuit resolue per touts les Justices, q̄ si c̄ nust eē forfeit p̄ le common ley, q̄ per lestatute de 26.H.8.ca.13. le dit Charles ad forfeit le dit dignity, car les parolx del act sont, shall loose and forfeit to the Kings highnesse, his heires and successors, all such lands, tenements and hereditaments which any such offendor shall haue of any estate of inheritance in vse or possession, by any right, title, or meanes: & cest dignitie fuit hereditament, & in ceo le dit Charles auoit estate de inheritance: & ou lestatute dit (in vse or possession) ceo fuit a expresser q̄ tout manner de inheritances serr̄ forfeit pur treason, & in lour iudgem̄ts toutz inheritancez fuer̄ ou in vse ou in possession (car cest act ne extend al droits ou titles) & fuit de necessitie a adder cest parol vse, car per le common ley vn vse q̄ ne fuit forsq̄z trust & confidence ne fuit forfeit per attaindre de treason. Et quant vn vse fuit expresse, donques le addition de possession fuit necessarie, car autrement tiens forsq̄z vses serr̄ done al Roy. Et pur ceo fuit resolue, q̄ annuity de inheritance serr̄ forfeit per force de cest act per attainder de treason, car ceo est vn hereditament. Et ceo fuit le primer generall act per q̄ vn estate in taile fuit forfeit al Roy pur treason. Al common ley deuant lestatute de donis conditionalibus, si terr̄ vst eē done a vn & a les heires males de son corps, in cest case cibien le donor cōe le donee ad possibility, le donor dun reñter si le donee mor̄ sanz issue male, & le donee daū power dalienerſil ad issue male: Car si le donee ad issue fits ore a ascun intent le condicion fuit accomplie, car post ꝓlem suscitatam il ad potestatem alienandi, & le reason de c̄ fuit pur ceo q̄ il ayant fee simple & ayant issue, sō issue ne poet auoider lalienation pur c̄ q̄ il claime fee simple dont son pier poet luy barrer. Et com̄t q̄ le donee & son issue auxy ap̄s tiel alienatiō mor̄ sans issue, vncore le donor q̄ nauoit forsq̄z possibility ou cōdition in ley & nul reñsion ou estate in luy ne poet recoū la t̄re v̄s lalienee, car per le ayant del issue le condition fuit accomplie a cest entent, s. a faire alienation. Mes in mesm̄ le case al common ley si le donee auoit

issue

issue fitz ⁊ morust, vnc̄ le fits nauoit vn absolute fee simple in luy, mes solem̄t m̄ le power q̄ son pier auoit, scil't, dalien̄, ⁊ si tiel issue morust sans issue, ⁊ sans ascū alienat̄ fait, le t̄re reūt̄ al donor, cōe Brian tient 12.E.4.3.& 18.E.3.46.per Huse: car collaterall heire, que nest del corps del donee, nest deins le forme del done, le limitation esteant al hr̄s males del corps del donee, q̄l limitation des heires males del corps, exclude touts collaterall hr̄es a inheriter: mes le policie del ley fuit, a don̄ poyar ap̄s issue dalien̄, pur deux causes; lun, q̄ lestate dū purchaser ne serr̄ auoid ꝑ vn remote possibilitie, s̄, si le donee ⁊ son issue auxy morer̄ sans issue, 2. sil ayant fee simple nau̅a poyar ap̄s issue dalien̄, c̄ serr̄ in mann̄ vn ꝑpetuitie ⁊ restraint dalienac̄ a touts iours, q̄l le cōmon ley pur mults causes ne voille ꝑmitt̄, ⁊ in 4.H.3.tit̄ Formedon 64 est adiudge, q̄ ou terres fuer̄ done in frākmariage, ⁊ les donees auoient issue ⁊ morent, ⁊ puis lissue morust sans issue, q̄ son collaterall hr̄e ne inheriter̄, car le don̄ recouer̄ la t̄re in Formedon in reuerter: ⁊ in le dit case, si le donee ad issue deux fits ⁊ morust, ⁊ le eigne fits ad issue file ⁊ morust sans issue male, le puisne fitz inheriter̄ vn fee simple ꝑ formam doni al cōmon ley: issint si t̄res fuer̄ done al vn ⁊ a ses hr̄s femalez de son corps, ⁊ il ad issue fitz ⁊ file ⁊ morust, la file inherit̄ estate in fee simple ꝑ formam doni. Et nota bene, lestatute de donis conditionalibus ne create estate taile, mes de tiel estate q̄ fuit fee simple cōditionel; ⁊ discendible in tiel forme al common ley, cōe ore ꝑ lestatute le t̄re discender̄: ⁊ le sole mischiefe fuit, q̄ le donee ap̄s issue auoit poyar dalien̄ in disherison de ses issues, ⁊ barr̄ del reuersion: mes appiert ꝑ le dit act, q̄ com̄t q̄ le donee auoit issue, vncore il nauoit absolute fee, issint q̄ le collaterall hr̄e del issue inheriter̄, car les parols del act sont: Et pręterea cum, deficiente exitu de hm̄odi feoffatis, tenementum sic datum ad donatorem vel ad eius hæredes reuerti debuit, ꝑ formam in carta de dono hm̄di expressam, licet exitus, si quis fuerit, obijsset, ꝑ factum tamen & feoffamentū &c. exclusi fuerunt hucusque de reuersione &c. ꝑ q̄ appiert, q̄ si le hr̄e in taile deuie sanz issue, ⁊ sans ascū alienac̄ fait, q̄ le t̄re reuerter̄ ⁊ ꝑ consequence ne discēder̄ al collateral hr̄e. 30.E.1.tit̄ Formedō 65. Si donee in taile alien deuant lestatute, ⁊ puis ad issue, ⁊ puis lissue deuie sans issue, le t̄re reuerter̄; car il nauoit poyar dalien̄ al temps del alienac̄, mes tiel alienac̄ barrer̄ lissue, cōe est adiudge in 19.E.2. tit̄ Formed' 61. pur ceo q̄ il claim̄ fee simple. Nota bene, ceux rulez vnc̄ tient lieu in case de graūt de annuitie a vn ⁊ a les hr̄s males de son corps, ⁊ a touts aut̄ inheritances, q̄ ne sont deins le stat̄ de donis conditionalibus.

Hillar̄

Hillar̃ 2. Iacobi.

Penall Statutes.

EN meſm̃ ceſtuy terme ſur lr̃es direct al Judges, dauer lour reſolution concernant le validitie dun graunt fait per le Roigne Eliz. deſouth le graund ſeale, del penaltie & benefit dun penal ſtatute, oue power a diſpenſer oue le dit ſtatute, & a faire garrant al Seigniour Chaunceloz, ou garden de graund ſeal', a fait quant des diſpenſations, & a q̃z il a luy pleiſt, & ſur graund conſideration & deliberation per touts les Juſtices Dengliterre fuit reſolue, que le dit graunt fuit tout ouſterm̃t enconter ley. Et in reſt caſe ceux points fueront reſolue. Que quant vn ſtatute eſt fait per Parliament, pur le bien publike del Realme, le Roy ne poit done le penaltie, benefit, & diſpenſation de tiel act al aſcun ſubiect, ou a doner poyar al aſcun ſubiect a diſpenſer oue ceo, et a faire garrant al graund ſeale pur licences in tiel caſe deſtre fait: car quant vn ſtatute eſt fait pro bono publico, & le Roy (come le teſte del bien publique & le founteine de iuſtice & mercie) eſt per tout le Realme truſt oue ceo, ceſt confidence et truſt eſt cy inſeperablement adioyne & annexe al royall perſon del Roy, in cy haut poinct de ſoueraigntie, q̃ il ne poit tranſferre ceo al diſpoſition ou poyar daſcun p̃riuat perſon, ou al aſcun p̃riuat vſe: car ceo fuit commit a le Roy per touts les ſubiects, pur le bien publique. Et ſil poit grant le penaltie dun act, il poit grant le penaltie de deux, & iſſint in infinitum. Et tiel graunt daſcun penal ley ne vnques fuit vieu in noſtre liures, ne deuant ceſt age aſcun tiel graunt fuit vnques fait: mes voier eſt, que le Roy poit (ſur aſcun cauſe mouant luy, in reſpect de temps, lieu, ou perſon, &c.) faire vn non obſtante a diſ-

a dispenser oue ascun particuler ꝑson, que il ne incourger̃ le penaltie del statute, et ceo accord̃ oue nostr̃ liures: Mes le Roy ne poit conmitte le espee de son justice, ou le huille de son mercie, concernant ascun penal statute, al ascun Subiect, come est auantdit. Fuit auxy resolue, que le penaltie dascun Act ne poit per ascun graunt le Roy este leuie, forsq̃ solement solonq̃ le purport ⁊ puruiew del Act; car le act que done le penaltie doit este pursue tantsolement, in le ꝓsecution ⁊ leuying de ceo. Et graund inconuenience sur ceo insuera, si penall leyes serront transferre al subiect. 1. Justice per ceo serra scandalize; car quant tiels forfeitures sont graunt, ou ꝓmise deste graunt deuant q̃ ils sont recouer, ceo est le cause de pluis violent ⁊ vndue proceeding. 2. Quant est ouertm̃t conus, que le forfeiture ⁊ penaltie del Act est graunt, ceo est graund cause q̃ le act mesm̃ nest pas execute; car le Judge, et Jurors, et chescun auter est per ceo discourage. 3. Sur ceo ensueroit, que nul penaltie serra ꝑ ascun de parliament done al Roy, mes limitte a tielx vses, oue q̃ux le Roy ne poit dispenser. Et sur ceo, diuers, queux auoyent sue dauer benefit de certeine Penall leyes, fuer̃ sur cest resolution denie. Et le certificat de touts les Iustices Dengleterre concernant tielx graunts de penall leyes ⁊ statutes fuit in ceux ꝑolx. May it please your Lo^ps^. we haue (as we are required by your honorable Letters of the xxj. of October last) conferred and considered amongst our selues (calling to vs his Maties. Councell learned) of such matters as were thereby referred vnto vs, and haue thereupon with one consent resolued for Law and conueniency as followeth. First, That the prosecution and execution of any penall Statute cannot be graunted to any, for that the Act being made by the policie and wisdome of the Parliament, for the generall good of the whole Realme, and of trust committed to the King, as to the head of Iustice, and of the weale publique, the same cannot by Law be transferred ouer to any Subiect; neither can any penall Statute be prosecuted, or executed, by his Maiesties graunt, in other manner or order of proceeding, then by the Act it selfe is prouided and prescribed: Neither do we find any such graunts to any in former ages: and of late yeares vpon doubt conceiued, that penall Lawes might be sought to be graunted ouer, some Parliaments haue forborne to giue forfeitures to the Crowne, and haue disposed thereof to the reliefe of the Poore, and other charitable vses, which cannot be graunted or imployed otherwise. We are also of opinion, that it is inconuenient, that the forfeitures vpon penall Lawes, or others of like nature should be graunted to any, before the same be recouered or vested in his Maiestie by due and lawfull proceeding: for that in our ex-

perience it maketh the more violent and vndue proceeding against the ſubiect, to the ſcandall of Iuſtice, and the offence of many. But if by the induſtrie or diligence of any there accrueth any benefit to his Maieſtie, after the recouerie, ſuch haue been rewarded out of the ſame, at the Kings good pleaſure &c. Dated 8. Nouembris 1604. Et a ceſt Letter toutes les Juſtices Dengleterre ſubſcribe lour maines.

Mich

Michael. 5. Iacob.

Lillingstons case.

IOhn Duncumb port action de debt vers Thomas Lillingston (que commence in common bank, Paschæ 4. Iac. rott̄ 704.) pur 195. l. et coūt, q̄ vn Faustine Dixwel et Marie sa feme, & le dit Thomas Lillingstō et Marie sa fem̄ fuer̄ seisie del Rectorie de Litlington in com̄ Bedf. in fee, & Mich. 31. El. leuiont ent vn fin̄ al Papworth & Chambers et al heirs de Papworth, q̄ graunt & rend̄ vn rent charge de 30. l. hors del dit Rectorie al dit Faustine pur son vie, a cōmenc̄ puz le mort de Marie sa fem̄, le rent annuelm̄t destr̄ pay al feasts de S. Mich. larchangel, et Lannunciac̄: Prouiso sem p, qd' p̄d' concessio p̄d' annualis reddit̄ 30. l. non aliqualit̄ se extēdat ad onerand' p̄sonas dict̄ Papworth & Chambers, sed tantummodo ad onerand' dict' Rectoriā tota vita ipsius Faustini; et rend̄ le dit Rectory al Faustine et Marie dur̄ le vie del Mary, le remaind̄ al Thom. Lillingston et Marie sa fem̄ in taile, le rem̄ al dr̄t hr̄s de Lillingston. 2. Oct' ann̄ 33. El. le dit Faustine, deuāt Sir Christoph. Wray chiefe Justice, conust vn recognisance de 500. l. in nature dū stat̄ staple, solonq; le statute de 23. H. 8. al Duncumb ore pl'. 20. Aug. 39 El. Marie le feme de Faustine morust, puis que mort Lillingston & Marie sa feme ent̄ in le dit Rectorie, et fuer̄ ent seisie in tail̄ oue le rem̄ in fee al Lillingston. Le dit Faustine 15. Aprilis 40. El. per son fait release al dit Lillingston & ses hr̄es le dit rent de 30. l. per ann̄: le pl' 21. April' 40. El. suist hors del Chaūcer̄ Certior̄ al clerk dez statutes &c. sur q̄ le dit recogniß in natur̄ dū stat̄ fuit certifie, et sua extent, per que le dit rent fuit extend, et sur Liberate deliuer al pl', et le pl' pur 6. ans et di. finit̄ al feast de S. Mich. archaḡ ann̄ 2. Iac. port action de debt vers Lillingston, q̄ tout cest tēps fuit ten̄t del terre, & auerre le vie del Faustine. Sur tout cest case deux questions fuer̄ moue. ¶ 1. Si cest rent de 30. l. per ann̄, esteant

 ex=

extinct per le dit releaſe, eyt tiel eſſence quant al plaintif le comaſſee, que ceo poit eſtre extend et deliuer al pl'. ¶ 2. Admittant que ceo poit eſtre extend ⁊ deliuer al plaintife, ſi le pl' come ceſt caſe eſt poit mainteiner action de debt. Quant al primer fuit obiect, que ceſt recognisance eſt in nature dun Statute Staple, et leſtatute de 27. Ed. 3. cap. 9. a que leſtatute de 23. H. 8. ca. 6. referre, done power aux mayors des eſtaples a prender recognisaunce des debts, ⁊c. et que, ſur certificat de tiel recognisance in le Chauncerie, ſoit bꝛe maunde de prender le corps des dits debtors ſauns les mitter al mainprise, et de ſeiſer lour terrez et tenemẽts, biens, ⁊ chateux, ⁊ ſoit le briefe retourne in le Chauncery oue la certification del value des dits terres et tenements, biens ⁊ chateux, ⁊ ſur ceo ſoit execution fait de iour in iour, in meſme le manner come eſt contenus in leſtatute Marchant. Sur queux parols fuit bꝛge, que rent extinct deuant execution ſue ne fuit deins les dits parols, ſ̃. de ſeiſer les tres ⁊ tenements des dits debtors: Car al temps del execution ſue le debtor nad le rent, mes ceo fuit tout ouſterment extinct ⁊ ale per le dit releaſe. 2. Le briefe de Extent eſt dextender omnia terras & catalla ipſius Fauſtini, & in manus dictæ nuper Reginæ ſeiſiri faceret, vt ea præfat̃ Iohanni liberari faciat, ⁊ intãt q̃ le rent fuit extinct deuant le dit briefe de Extent, ceo neſt in eſſe, ou deſtre extend, ou deſt̃ prise in le maine le Roy, ou deſt̃ deliũ al pl'. 3. Serr̃ enconk reaſon, que, le frankteneñt del rent eſteãt extinct, le plaintife aũa execution de ceo, ⁊ per ceo dauer forſque chattell: ⁊ lopinion in 3. & 4. Ph. & Mar̃, Dier fol. fuit cite, ou lopinion eſt, que rent extinct ne poit eſtre extend ⁊c. A que fuit reſponde et reſolue, que a aſcun purpoſes per le Common ley rent extinct ſerr̃ dit in eſſe, quant a eſtraunḡ: ⁊ pur ć ſi le baron ſeiſie dun rent in fee releaſe le rent al tenant de terre, ⁊ puis le baron morust, ore la femm̃ ꝑt endowe de ceſt rent iſſint extinct ⁊ aũa bꝛe de Dower; les parols de quel briefe ſont, Præc' A. quod iuſte reddat B. tertiam partem triginť librarum redditus: & bꝛe de Dower, vnde nihil habet eſt, Præc' A. quod iuſte reddat B. &c. rationabilem dotẽ ſuam quæ ei contingit de libero tenemento quod fuit &c. ⁊ il auera graund Cape, ou petit Cape, come ſon caſe requir̃, de prender le rent in le maine le Roy: car, quoad petentem, ceo eſt in eſſe, coment q̃ in verit̃ le rẽt eſt extinct. Et vide in le Sr̃ Aburgau. caſe fol. 78. in le 6. part de mes Reports, pluſors caſes, ou choſe extinct ſerr̃ dit in eſſe, pur le benefit dun eſtraunger. 2. Fuit obſerue que le dit act de 23. H. 8. cap. 6. (per force de que le dit recognisaunce in le caſe al barre fuit prise) pur le execution, referre al Statute Staple, ⁊ leſtatute Staple, ſ̃. le dit act de 27. E. 3. referr̃ al Statute Marchant

chant de anno 13. Ed. 1. les paroix de quel ſtatute ſont (Et quant les terres del dettors ſoyent liuere au marchants, eit il leſun de tous terres q̃ux fuer̃ in le maine de dettour, le iour de la Recognizance fait, in que maines q̃ ilz ſont apres deuenus per feoffement, ou auter maner) donq̃s maintenant p̃ le recognizance conus, le rent fuit lie, & ſer̃ extend̃ p̃ le expreſſe purview del ſtatute, in quecunq̃ maines q̃ ceo deuiendra; et nient pluis q̃ apres execution eue p̃ le conuſee, le releaſe de Fauſtine noiera, nient pluis ſer̃ ceo deuant execution; car le rent fuit lie al execution maintenant p̃ le Recognizance conus. Iſſint ſi home ad iudgeñt a recouer det ou damages, p̃ ceo le rent q̃ il ad daſcun eſtate de franktenemẽt eſt liable a ceo; & pur ceo, coñt q̃ apres iudgeñt il releaſe ceo, le pl̃ aña execution dun moitie per Elegit, q̃ eſt done per leſtatute de Weſtñ 2. cap. 18. les poix de q̃l ſtatute ſont, Liberent ei medietatẽ terr̃ debitoris, quel p̃ conſtruction del ley eſt de tout que il ad al temps del iudgeñt done, ou a aſcun temps puis. Et in le caſe de Chenie in le court de Gards, añ 27. Eliz. fuit reſolue, que ou ceſty in reuerſion infeoffe leſſee pur ans al vſe des auters, que coñt q̃ le leaſe ſer̃ ſurrender & extinct p̃ le comyon ley, vncore p̃ le ſauing del ſtatute de 27. H. 8. des Vſes, le terme del feoffee fuit ſaue. Auxy in meſñ le Court, añ 28. Eliz. in le caſe dun Iſed, fuit reſolue, que ou le ſñior infeoffe le Copyholder al vſe des auters, q̃ le copyhold eſtate per le ſauing del dit act fuit preſerue. Iſſint in le caſe al barr̃, p̃ le act de Mercatoribus tout le terr̃ (que include touts hereditamẽts extendable) q̃ le dettor auoit al iour del recognizance conus ſerra deliuer, q̃l act p̃ſerue le rent deſte in eſſe quant al execution del conuſee. Et le caſe in 21. E. 3. 18. & Fitz. Na. B. 223. ſi Seignior & tenant Abbot ſoit, et le ſeignior releſſe al Abbot ſon ſeigniorie, ceo eſt Mortmaine p̃ leſtatute de Religioſis, et le ſeignior paramoũt aña ceo per force del dit act, & vncore les poix del act ſont, dñus feodi talitèr alienati auera ceo, & p̃ releas ceo eſt extinct, & vncore quant al ſeignior paramount, ceo eſt p̃ conſtruction del act in eſſe, et il auera ceo. 3. Serra dure, que le conſor per ſon act demeſñ barrera le conuſee, q̃ eſt eſtraunger al releas, de ſon execuc̃ del rent, q̃ peraduentur̃ fuit vn principal cauſe de priſel del dit Recognizance, dauer execution de ceo: et eſt pluis reaſon a relieuer le conuſee, in q̃ nul default ou laches fuit, que le terre tenãt, q̃ ne doit eſte miſconuſant de tielx charges de record. 4. Chaſcun execution ad in iudgement del ley, relation & retroſpect al iudgeñt, come appiert in Shelleyes caſe, in le 1. part de mes Reports. Et le dit caſe de Dower, & le graund Cape & petit Cap̃ ſur ceo, et leſtatute de Mercatoribus, q̃ lia tout le terre del conſor

que il ad al iour de recognizance conus, in q̃cunq; maines q̃ ceo viendra, done pleine ⁊ sufficient rñs a touts les dits obiections: et lopinion dun Serieant Obiter, in 3. & 4. Ph. & Mar. fuit tout ousterm̃t denie. Quant al 2. point fuit resolue per totam Curiam, que laction de Dette ne gist cy longe cõe le extent endure, car cy longe ad le rent continuance, coment q̃ le franktenemẽt de ceo soit determine. Et tout ceo, quant a cest point, que fuit resolue in Ognells case in le quater part de mes reports folio 49. fuit affirme deste bone ley, ⁊ 9. H. 7. 17. q̃ si seignior graũt son seigniory pur ans, le grantee durant les ans nauera accion de det. Et fuit auxy resolue, q̃ com̃t q̃ soit expres ꝓuiso, q̃ le ꝑson ne serr̃ charge in br̃e de Annuitie, vnc̃ in tiel case ap̃s lannuitie ou rent determiñ le ꝑson del t̃re tenãt ꝑra charge in det pur les arrerages, pur ceo q̃ lannuitie est determine, ⁊ il ad nul auter remedy, come est tenus in Ognels case ⁊ 6. Eliz. Dier 227. la cite. Fuit auxy resolue, q̃ si home graunt rent charge pur vie hors de son t̃re, et le rent est arere, et le grantor enfeffe A. ⁊ le rent est arere in son temps, et puis A. infeffe B. ⁊ le rent est arere in son tẽps, ⁊ puis le grauntee morust, ses executors aueront acc̃ de det v̄s chesc̃ de eux, pur le rent arere in son temps, car, Qui sentit commodũ sentire debet & onus, cõe est auxy tenus in Ognels case.

Mich

Mich̄ 5. Iacobi.

Bedels case.

HIll̄ 1. Iac. Rot. 375 in bank le Roy int̄ Eliz. Bedel pl̄ in Dette, ⁊ Michaell Bedell defendāt le case fuit tiel. Robert Bedel seisie dun mesuage ⁊c. in Iuer ⁊ Langley in Com̄ Buck. in fee, ꝑ sa feme le dit Eliz. ad issue 3. fits: James fuit le 2. fits, et Mich. le def. le 3. le dit Robert per indenture triparty inter luy ⁊ sa feme del del 1. pt, le dit James son 2. fits del 2. part, et le dit Mich. son 3. fits del 3. part, in consideration del naturall affection et paternall amour, q̄ il ad al dits James et Michael, et pur lour melior preferment ⁊ aduancement, et al entent q̄ les dits tenements continuer̄ in son nosme ⁊ sanke, couenant ꝑ le dit Indenture, q̄ il ⁊ ses heires estoier̄ seisie des dits tenem̄ts, al vse de luy mesm̄ pur vie, et apres son decease al vse del dit Elizabeth sa feme pur vie, et puis lour deceases, dun moitie al vse del dit James in taile, et dauter moitie al vse del dit Mich. in taile ⁊c. et puis Robert morust; et tout cest matter fuit troue ꝑ especial verdict. Et le sole question fuit, si (come cest case est) ascun vse surd̄ al Elizabeth sa feme ou nemy. Et fuit obiect, que la feme ne fuit deins les consideracions, q̄ fuer̄ expresse in le Indenture, et nul auter consideration poit este auer̄, q̄ est contein in le fait, car tout le substance del agreement des parties fuit referre al fait, et tout couient appier in ceo, ⁊ riens est relinque al parol ou auerremēt des parties. A que fuit responde ⁊ resolue, que consideration que estoit oue le fait ⁊ nemy repugnant a ceo poit este bien auer̄, cōe est adiudge 3. & 4. P. & M. Dier 146. in Villers case, quel Vide in le prim̄ part de mes reports in Milmayes case fo. 176. ¶ 2. Admittant, que auter consideration q̄ est expres in le fait ne puit este auerre, vncore in cest case la est expres consideracion, car quant il limit ceo al vse de sa feme pur terme de sa vie, ceo import sufficient consideratiō in luy m̄, ⁊ ne besoigne ascū aūm̄t, car Manifesta

probatione

probatione non indigent, come in 13.H.4.17. ou le statute de W.1.ca. 38. ordeine, q̃ le bre de Ass. de Mortdaunc' eiet le term̃ de limitation del coronm̃t le Roy Henry le third, la est tenus, q̃ si enfãt port Ass. de Mortdaunc' de possession son pier ou meer, ne besoigne dalleger, q̃ ceo fuit puis le coronm̃t le Roy Henry 3. car ceo appiert. Issint, si le pier tenãt p seruice de chl'er infeffe son fits et heire apparant deins age, ne besoigne daũrer ceo deste collusion, car ceo est apparant, Wimbishes case Plow. Com. & 27.H.8. Dacres case, 33.H.6.14. 3.H.6.32. & quędam tacita habentur pro expressis. Issint si ieo couenant, q̃ in cõsideration de patnal amour & affection a mon eigne fits, a estoier seisie al vse de mon eign̄ fits pur vie, ou in tail', & puz al vse de mon 2. fitz in taile, & puis al vse dun tiel mon cosin in fee; com̃t q̃ le consideratiõ expresse in polx respect solem̃t leigne fitz, vnc̃ le consideration apparãt in le fait, in limiting le vse a mon 2. fits, ou mon cosin, est sufficiẽt in ley a rayser vse. Issint si ieo couenant a estoier seisie al vse de mon feme, fits, ou cosin, ceo bien raiser̃ vn vse sans ascũ expres polx de consideration; car sufficient consideration appiert, & paternal amour & affectiõ appiert. Mez si le pier p fait indent, in consideration de C.l. pay p son fits, couenant a estoier seisie al vse de son fits, la nul vse serra raise al fits, sinon q̃ le fait soit inrolle, p lestatute de 26.H.8.cap.10. car ceo est in nature dun bargaine et sale, & la Expressum facit cessare tacitum. Et puis sur cest iudgem̃t bre de Error in mesme cestuy terme fuit port sur le nouel statute, et per touts les Justices del common banke, et les Barons del Eschequer iudgem̃t fuit affirme. Quod nota bene.

Mich'

Michael. 5. Iacob.

Beresfords caſe.

IN Court de Gards int̄ James Bereſford relator, et Thomas Bereſford, & auters defendants le caſe fuit briefment tiel. Aden Bereſford eſteāt ſeiſie des Manors de Fennibently, Bircham, et auterz terrez in fee, per ſon fait 14. Iunij 40. Eliz. infeoffe William Fleetwood & auters in fee, al vſes de certain Indentures port date 20. Nouemb. 34. Eliz. ſ. al vſe del Aden le pier, for terme of his life, and after his deceaſe, to the vſe of George Beresford, ſonne and heire apparant of the ſaid Aden, and the heires males of his bodie lawfully begotten; and for default of ſuch iſſue, to the vſe of Aden Bereſford, ſonne of Iames Beresford, and of the heires males of the ſaid Aden ſonne of the ſaid Iames, lawfully begotten; and for default of ſuch iſſue, to the vſe of the heires males of the bodie of the ſaid Iames Beresford, lawfully begotten; and for default of ſuch iſſue, to the vſe of Thomas Beresford, third ſonne of the ſayd Aden, and of the heires males of the bodie of the ſayd Thomas lawfully begotten; and for default of ſuch iſſue, to the vſe of Humfrey Beresford, fourth ſonne of the ſayd Aden, and of the heires males of his bodie lawfully begotten, with diuers remainders ouer, and with remainder to the heires females of the bodie of George, and ſo of Aden, the ſonne of Iames lawfully begotten, &c. with the remainder to the right heires of Aden the father for euer. Et le ſole queſtion del caſe fuit, que eſtate Aden le fits de James auoit. Et ceſt caſe fuit deux foits argue deuant les deux chiefe Juſtices, & le chiefe Baron al Serieants Inne. Et fuit obiect que Aden le fits de James nauoit fee tayle mes fee ſimple, car le limitation a luy eſt, to the vſe of Aden, and of the heires males of the ſaid Aden lawfully begotten, et icy fault ceux parolx (of the bodie) of the ſaid Aden, iſſint que ore le limitation neſt que in effect forſq; to the vſe of Aden, and of the heires males of the ſayd Aden,

Aden, car ceux subsequēt parolx, lawfully begotten, sont imply, car chescun heire couient estre loyalment engendē; et limitation a vn & a ses heires males, est sauns question vn fee simple. Et vn iudgment in bank le Roy int Abraham & Trigge, Hill' 38. El. Rotē 739. fuit forcment vsge, ou feoffement fuit fait al vsez de certaine Indentures (come cest case est) ou vn limitation fuit, ad opus & vsum Gabrielis Dormer & hæredum masculorum suorum legitimè procreatorum, &, pro defectu talis exitus, al vse de diuers auters in tayle in remainder; et sur argument al barre et al bench fuit adiudge, q̄ Gabriel ad vn fee simple, car nest limit de quel corps les heires males serē ingendres, mes son intent fuit, quod singuli hæredes sui masculi inheriē, quel entent ne estoit oue le rule del ley, et coīt q̄ reīn sont limit ouster, que ne poyent estre sur fee simple, vncore ceo ne poit encounter le rule del ley, faire parolx de fee simple desīr cōuert a vn estate taile: Et ils concludont oue Lit. fol. 6. b. que le reason pur quoy, quant terres sont dones a vn et a ses heires males ou females, est fee simple, est, pur ceo que nest my limit per le done de quel corps lissue male ou female issuera; & issint ne poit in ascū maner estre prise p lequitie del statute de donis conditionalibus, et pur ceo č est fee simple. Issint in le case al barr: et oue ceo accord le liure in 8. E. 3. 49. ou terres fuer dones a vn & hæredibus suis legitimis, ceo est fee simple, que est tout vn oue limitation a vn & hæredibus suis legitimè procreatis. Mes fuit respondu & resolue per les dits chiefe Justices et chiefe Baron, q̄ le dit Adenets del dit Ja. auoit vn estate taile, per que touts les reīn ouster fuer loyalment vestue: car fuit agree, q̄ a vn estate in taile est requisite in touts dones & limitation des vses, que les heires soyent limit destre procreat ou engendre dascun corps in certaine, ou per expresse pols, ou parols q̄ tant amount, car ceux precise parolx (de corpore) ne sont necessarie al creation dun estate in taile, cy long que sont polx que tant amount, come in 5. H. 5. 6. ou le done fuit Dedi vnum mess. R. et K. vxori eius & hæredibus eorum et alijs hæredibus dicē R. si dicē hæredes de R. et K. exeuntes obierint sine hæredibus de se: In cē caz ceux parolx (de corpore) sont omise, et vncore adiudge bone estat taile, car sont parolx que tant amount, car le done in effect est, al baron & feme et al heires del baron et feme issuants, ou de dit R. et K. exeunē, ou hæredibus de se, et tout ceo est per force de cest prepositiō (de) et (issuants) Et in 12. H. 4. tiē Brē tre fuit done a vn & hæredibus quos sibi contigerit habere de vxore sua, icy fault polx de corpore, vnē pur ceo q̄ ceo tant amount ceo est adiudge vn estat taile: & 3. E. 3. tiē Briefe 743. terē est done a vn & hæredibus suis de prima vxore sua, ceo est bōe estate taile. Et fuit resolue, q̄ si tres sont done a

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vn, & hęredibus de se exeuntibus, q̃ ceo est bone estate taile: et in ceux cases le principal cause est ꝑ force de cest preposition (de.) Et diũs auters cases fuer̃ mise, ꝑ q̃ fuit concluđ, q̃ ou parols (de corpore) ou q̃ tant amount, sont requisite al creatiõ dun estate taile. Et fuit resolue, q̃ in le case al barre la fuer̃ parolx q̃ tant amount, car ꝑ lact de donis condicionalibus, volũtas donatoris in carta doni sui manifestè expressa de cętero obseruetur, ⁊ pur ceo in cest case tiel constructiõ ſr̃ fait, q̃ ꝓducer 3. effects: 1. a estoier oue rule del ley: 2. oue lentent del donor: 3. q̃ touts les ꝑtz del Indentur̃ poiẽt estoier: et pur ceo translate le dit limitatiõ al Aden in Latin, ⁊ dõq̃s le limitation est, ad vsum Adeni & hęredũ masculorũ de dicto Adeno legitimè procreatorũ, ou, et hæredum masculorũ legitimè procreatorũ de dicto Adeno, ⁊ ceo tant amount cõe il ad dit ꝑ dictũ Adenum legitimè procreat̃: car tout est vn in effect. Car cest ꝑol (de) ou (ex) accouple oue ꝑol subsequent (ꝓcreat̃) appropriate les heires males destr̃ del corps de Aden: car de Adeno, ou ex Adeno, & de corpore Adeni sont tout vn. Et ceo est directm̃t ꝓue ꝑ le iudgem̃t in le dit case de 5. H. 5. 6. car la fuit (de) ⁊ (exeunt̃) et icy est (de) ⁊ (procreat̃) q̃ sõt tout a vn effect, ⁊ in le dit case de Abraham ⁊ Trigge (de) fault. Et qñt a ceo fuit obiect, q̃ limitation in Latine poit bien este, ad vsũ dicti Adeni, & hęredũ masculorũ dicti Adeni (in le genitiue case) legitimè procreat̃, ⁊ nemy de dicto Adeno, ou si le limitation ne soit certain pur faire estate taile, sont ꝑolx assets certaine pur faire estate in fee. A q̃ fuit responde ⁊ resolue: 1. conient este de dicto Adeno, car autermt̃ ceo ſra encont̃ entent del donor, ⁊ touts les rem̃ ouster ſra voide, ⁊ touts foits tiel construction couiẽt este fait, q̃ touts les ꝑts del fait poient estoier ensembl̃, si ceo poit estoier oue le rule del ley: 2. le subsequent clause est, and for default of such issue, et issue ne poit estre del Aden, sinon q̃ les ꝑolx sont de dicto Adeno; et pur ceo vn clause est bien explane per lauter: et solonq̃ cest resolution le case fuit decree accorđ. Vide 35. Ass. pla. 14. 37. Ass. pla. 14. 39. Ass. pla. 24. E. 3. 28. 18. E. 2. Briefe 836.

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Mich' 4. Iacobi.

Kennes caſe.

IN le Court de gards inter Thomas Robertſon & Elizabeth a la fēe pl', & Florence Ladie Stallenge def, le caſe fuit tiel. Chriſtopher Kenne armig fuit ſeiſi del mannor de Kenne in le Countie de Somerſet, tenus p ſeruice de chiualer in capite. et 37. H. 8. de facto priſt al feme Elizabeth Stowel, & puis le dit Elizabeth Stowel adiſſue Martha mere del Elizabeth vn des ore pl', & puis 1. & 2. Ph. & Ma. in le court de Iudicē, inf le dit Chriſtopher Kenne pl' & Eliz. Stowell def. le Iudge la done ſentence in ceux polx. Pretenſ. tractat', contract', ſponſalia, & matrimonium, quin verius effigiem matrimonij inter Chriſtopherū Kenne, et Eliz Stowell in minore & ſua impubertatis ętate eorundem aut eorum alterius de fact' habit', contract', & celebrat' fuiſſe & eſſe, eoſdemq; Chriſtopherum & Eliz. tam tempore contractus & ſolemnizationis dict' pretenſ. matrimonij, quam etiā continuò poſtea eidem matrimonio p̄tenſ. et ſolemnizationi eiuſdē, diſſenſiſſe, contraueniſſe, reclamaſſe, & reluctaſſe, ac eo pręxtu huiuſmodi pretenſ, tractat', contract', ſponſalia, & matrimoniū de iure nullū et nulla, irritum & irrita, caſſum & caſſa, inualidum & inualida, & minus efficax & inefficatia, fuiſſe & eſſe, viribuſq; iuris caruiſſe, carere, & carere debere; nec non antedictos Chriſtopherum Kenne & Eliz. Stowell, quatenus de facto fuer ad inuicem matrimoñ vt prędicitur copulat', ab inuicem ſeperand' & diuorciand' fore debere pronunciamus, decernimus, & declaramus, eoſq; ſeperamus & diuorciamus, eiſdemq; Chriſtophero & Eliz. licētiam & libertatem ad alia vota contiolanda concedimus, tribuimus, & impertimur per hanc ſententiam nr̄am definitiuam, ſiue hoc finale noſtrum decretum, quam ſiue quod ferimus & promulgamus in hijs ſcriptis &c. Et puis le dit diuorce, le dit Chriſtopher Kenne eſpouſe & priſt al feme Elizabeth Beckwith, & puis anno 5. Eliz. deuant diuers commiſſioners Eccleſiaſticall,

astical le dit Eliz. Beckwith libel vers le dit Chr̃istopher Kēne, q̃ il (deuant le mariage int̃ eux contract) ad marie oue le dit Eliz. Stowel, sur q̃ proces fuit agard vers le dit Eliz. p̃ interesse, & sur due examination del cause fuit sentence, que le mariage int̃ le dit Chr̃istoph. Kenne & Eliz. Beckwith fuit loyall, & sentence eux ad exequenda coniugalia obsequia &c. & que le dit Chr̃istoph. Kenne ne vñqs fuit loyalm̃t espouse al dit Eliz. Stowell, & puis le dit Eliz. Beckwith mozust; apres q̃ mozt le dit Ch. Kenne prist al feme le dit Florence p q̃ il ad issue vn file Eliz. & mozust; & an. 36. Eliz. fuit troue p office in le countie de Somerset p force dun Mandamus aps le mozt del dit Ch. Kēne, q̃ le dit Eliz. Kēne fuit sa file & heir̃, & q̃ il fuit deins age, s. al age de 10. moys, le garde et custodie de q̃ le Roigne graunta a sir Nicholas Stallenge et le dit Florence adonqs sa feme. Sur que le dit Martha, p̃tenō luy mesme destre file et heire del dit Ch. Kenne, oue son baron Silvester Williams exhibit lour bill in le court de garō vers lez ditz sir Nicholas & Florence surmittant, q̃ le dit Martha fuit file et heir̃ del dit Ch. Kenne del corps del Eliz. Stowell son loyall feme (come el pretend) allegeant, q̃ ils al temps de lour mariage in an. 37. H. 8. fuer̃ ambideux de eux ouster lage de consent, & q̃ ils cohabite ensemble 9. ou 10. ans deuant le dit suppos̄ed diuorce, durant quel cohabitation le dit Martha fuit p̃create inter eux, & prient licence, que le dit Silvester & Martha poiēt trauers le dit office. A q̃ lez ditz sir Nicholas & Florence respond̄, & les pl̄ examine diuers testimoignes, & deuant publication sir Nicholas mozust; et sur ceo le dit Silvester & Martha exhibit Bill de reuiuer vers le dit Florence, & puis Martha ayant issue Eliz. feme ore pl̄ mozust, puis quel mozt les dits Tho. Robertson & Eliz. la feme port̄ nouel bil de reuiuer, a reuiuer le primer suit, in q̃ les testimoignes fuer̃ examine. Et cest case fuit referre al Fleming & Coke chiefe Justices, & al Tanfield chiefe baron, et al Yelverton et Williams Justices, Snig & Altham barons del Eschequer. Et in cest case 3. questions fuer̃ moue. ¶ 1. Si enconter le dit primer diuorce les pl̄ serront receiue, cy long come ceo remaine in force, dauerrer q̃ ils agreont & consent al mariage, ou que ils serra conclude per le dit diuorce. ¶ Le 2. question fuit, si ils auer̃ trauers al dit office deuāt office troue pur eux. ¶ 3. Si ils auer̃ bill de reuiū sur vn bil de reuiuer, come cest case est. Et les Justices oyent pluiors arguñts deuant eux a seuerall iours, & in seuerall termes al Seriants Inne. Et quant al primer fuit obiect, q̃ appiert p Litt. lib. 2. fol. 22. & p lestat de Merton cap. 6. & 35. H. 6. fol. 40. &c. q̃ le cōmon ley & pliañts auoient prise notice del age de consent de male destre 14. et de fe-

male destre 12. et pur ceo, ceo est triable per le common ley; et si in veritie le baron & feme sont del age de consent al temps de le espousels, nul diuorce apres, p̄tendant q̄ ils fuer̄ deins age de cō=sent, concludera les p̄ties ou lour heires mes q̄ ils poient ꝓuer le contrary al cōmon ley, & principalm̄t in le case al barre, pur ceo q̄ ceo concerne inheritance & le voire discent de ceo: & sententia contra matrimonium nunquam transit in rem iudicatam. 2. Admittant q̄ ils fuer̄ deins age, & puis age de consent ils assent ou cohabit, & ount issue, com̄t q̄ diuorce pur impubertie & minority des ans soit ewe, vncore ceo nest forsq̄ euidence, & ne concluder̄ les parties in ascun action al common ley a prouer lassent; car intant q̄ le di=uorce est ewe pur cest cause, & le cause est triable p̄ le cōmon ley, le diuorce ne concludera: & 11.H.7.fol.27. fuit cite, q̄ cestuy q̄ pleade diuorce couiēt mr̄e le cause del diuorce, & si le cause soit triable al common ley (come in le case al barre ceo est) la ceo ne conclude=ra; mes si soit chose nient tryable al common ley come precon=tract, profession &c. la ceo est auterment. Mes quant a ceo fuit resolue per touts les dits Justices & Barons, q̄ le dit sentence cō=cluder̄ cy longe come ceo remain in force, & ceo pur diuers causes. 1. Lecclesiasticall Judge ad sentence le contract & espousels deē voide & de nul effert, & com̄t q̄ ils fuer̄ del age de consent, vncore si le originall contract fuit voide & de nul effect, donques la fuit iust cause de diuorce: 2. La fuer̄ parolx de diuorce & seperation, eosdem diuorciamus & seperamus, & done a chescun de eux libertie ad alia vota conuolanda: 3. Si le mariage vst este infra annos nu=biles, lecclesiasticall Judge est iudge cibien del assēt come del prim̄ contract, & q̄ serr̄ sufficient assent & q̄ non, & com̄t q̄ lecclesiasticall Judge mr̄e cause de son sentēce, vncor̄ intant q̄ il est iudge del ori=ginal matr̄, s̄. del loialty del matrimony, no⁹ ne vnq̄s examiner̄ l' cause le q̄l ceo soit voier ou non: car des choses quarum cognitio p̄tinet ad forū ecclesiasticū, no⁹ doiom⁹ don̄ foy a lour sētēces, cōe ilz donōt al iudgem̄ts in nr̄e courts. Auxy le rule de lour ley est, Qd̄ masculi quidē puberes, fœminæ viri potētes matrimonio cōsentire pos=sunt, & le determination de c̄ appēt a lour conusāce. Et qn̄t al case de 11.H.7.f.27. voier est, q̄ le cause de diuorce est deē mr̄e, pur ceo q̄ asc̄ diuorce dissolue le matrimony, s̄. à vinculo matrimonij, bastard̄ lissue, & barre le fem̄ de dower; & ascun à mensa & thoro, q̄ ne dis=solue le matrimony ne barre la feme de dower, ne bastard̄ lissue. Mes in case de depriuation le cause ne besoigne deē mr̄e: car soit ceo a tort ou a droit, sur cause ou sans cause, ceo estoit, & ches=cun depriuation disable & remoue le partie depriue cibien pur vn cause come pur auter, cy longe come le depriuation remaine

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in force. Vid' 8. Ass. 9. E. 4. 24. 7. E. 4. 32. 3. H. 6. 12. H. 8. 5. Et Coke chiefe Justice cite le case in 22. E. 4. tit Consultation 5. Corbets case, ou le case fuit, q̄ sir Rob. Corbet auoit p Eliz. sa fem̄ 2. fits Rob. leigne & Roger le puisne & morust; Rob. leigne esteant deins lage de 14. ans p̄ist fem̄ vn Matild, & al pleine age demurre ensemble & habuerunt carnalem copulā, & cogniti & reputati pro viro & vxore palā, & puis le dit Ro. demitt le dit Matild sa fem̄ ayāt nul issue p luy, & espouse vn Lettice &c. viuāt le dit Matild, & ad issue p luy Rob. & puis Rob. q̄ issint ad espouse L. morust; & Lettice preche ouertment, q̄ el fuit le loyall feme de Rob. & son fits mulier, per q̄ le dit Roger fits le dit sir Rob. Corbet suit in Spirituell court a reūser ceux espouselś enter Robert son frere & Lettice, & que Lettice soit mise a silence, p q̄ Lettice suist phibic̄. Et in cest case 3. points fuer̄ resolue. 1. Que si Rob. & Matild vsont ewe issue & ount este vniustm̄t diuorce, & puis Rob. vst marie Lettice & ad issue & morust, la lissue de Rob. & Matild puit auer suit in Ecclesiasticall court pur auoider le diuorce; car cy longe come le diuorce estoit in force (le cōmon ley done cy grand foy a ceo) lissue ne puit aū remedie p le cōmon ley. Et nota in le case nul cause de diuorce appiert, mes pur cause q̄ le mariage fuit ewe quant les parties fuer̄ infra annos nubiles: & in le dit case del diuorce lissue auera son suit a reuerser ceo originalm̄t in court Christien, car le diuorce est iudgem̄t spirituel & couiēt estre reuerse in le spirituel court; mes in le case de Corbet la est nul diuorce ne auk spirituell iudgem̄t q̄ disable le dit Roger, & pur ceo il dorit originalm̄t commence al common ley come heire, & auera touts actions in temporall court come heire & touts benefits come heire vers lissue de L. non obstant le 2. espousels: car ils sont void in touts leyes temporell & spirituell, & laction & originall a bastard ascū ne ser̄ moue in spirituel court originalm̄t, quant nul sentence spirituel disable luy, mes il commencera in temporel court, & donques si beloigne soit ils escrier̄ al spirituel iudge si generall bastardie soit alledge: & le reason de ceo est, pur ceo q̄ home poet estre bastard in le temporel ley & mulier in le spirituel ley, & è conuerso. Cōe home q̄ est engender in auowtrie durāt le couerture est mulier p le temporel ley & bastard p le spirituel ley. Et si home bate vn clarke, sū sue in le spirituall court a excommunicater luy pur le peche, il fait bien, mes sil sue la pur auer amend̄ il auera prohibition. 2. Fuit resolue in mesme le case de Corbet, q̄ quant le spirituell court auera iurisdiction, il couient q̄ tout le cause soit spirituel, come si person libel vers lay home pur dismes imports, le temporell court auera iurisdiction, car ceo est mixt oue le temporaltie: & in mesme le case le matter

est mixt (p consequence) oue le temporaltie, s, que lun est heire & q̄ lauter est bastard: mes si le dit case de dismes soit ink̄ parson & p-son, ou ink̄ parson & lay home, si le droit de dismes vient in questi-on le spirituall court auera iurisdiction. Vide Iact de circum-specte agatis, ou est dit, q̄ merè spiritualia appēt al conusaunce eccle-siasticall, & Linwood cap. de foro competent̄ fol. 7. dit, merè spiritualia sic dicta, quia non habent mixturam temporalium: & ou le dit act dit, de mortali peccato, Linwood ceo expound & dit, Non intelligas de omni peccato mortali, sed de tali cuius punitio de sui natura spectat ad forum ecclesiasticum: nam si de ratione cuiuslibet peccati mortalis cog-noscere Ecclesia, sic periret temporalis gladij iurisdictio, cum vix esset dare causam quin ratione peccati possit deferri ad Ecclesiam. 3. In mesme le case de Corbet fuit resolue, q̄ quāt tout le cause soit ori-ginalment spirituell, vncore si apres in spirituell court ils sont a trier temporell conusaunce prohibition girra: come si lun parson dit, q̄ le lieu est deins son parish & lauter econ̄, apres tiel matter monstre prohibition girra, & oue ceo accord 39. E. 3. 23. & 5. H. 5. 10. Nota lecteur bone diuersitie ink̄ repeale dun sentence de diuorce done in le vie des parties, & a doner sentence de diuorce apres le mort des parties: car appiert p cest case de 22. E. 4. q̄ vn sentence de diuorce poet estre repeale in le spirituel court p suit la apres le mort des parties, mes si alcun des pties soient mort deuāt alcū diuorce sentence in le ecclesiasticall court, la ils ne poient suer in court Christiē a declarer le mariage void & a bastard̄ lissue; car le triall appent al court le roy originalm̄t, ou nul disabilitie est p sē-tence in le spirituel court: & oue ceo accord 39. Ass. pl. 10. 39. E. 3. 31. & 24. H. 8. tit̄ Bastardie 44. b. q̄ diuorce puis le mort dalcun des par-ties, ou sentence declarator̄ q̄ le mariage fuit void puis le mort dalcun des pties ne liera. Car ceo nest q̄ in effect a bastarder lissue de q̄ ilz nount originalm̄t conusauns come ad estre dit. Vide 19. Assis. pl. 2. q̄ si 2. sont marie infra annos nubiles, & aps le pleine age diuorce soit prise ink̄ eux ceo dissolue le mariage, car la, femm̄ mort Assise vers son baron. Vide Buries case in 5. part de mes Reports, fol. 98. & vide Cawdries case in mesme le liure, & vide Buntings case in le 4. part de mes Reports f. 28. & vid. 11. H. 7. 9. & 34. H. 6. 14. & 12. H. 8. 5.

Quāt al 2. point fuit obiect, q̄ le pl̄ auera trauers sans alcū of-fice troue pur luy. Car quant vn direct et sufficient office est troue in vn countie p force dū Diem clausit extremū ou Mandamus puis le mort del auncestor, la ne serr̄ vnqs office troue arere pur mesm̄ la terre cy longe come ceo estoit in son force. Car auterm̄t le ley ne vnques auera fine, & oue ceo accord 4. H. 7. 15. 14. E. 4. 5. 15. E. 4. 11. 2. H. 7. 12. 18. et pur ceo serr̄ dure a chaser luy a troū office pur luy

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deuant q̃ il poet trauers, ou per la ley il ne poet trouer ascun office in tiel case. 2. Fuit obiect q̃ lestatute de 2.E.6. cap.8. ad remedie ceo si ascun office fuit requisite ꝑ le cõmon ley, les ꝑols de q̃l act sont. And whereas one person or more is or shalbe found heire to the Kings tenant by office where any other person is or shall be heire, or if one person or more be or shall be found heire by office in one countie, and another person or persons is or shall bee found heire to the same partie in another countie &c. be it enacted, that euery person grieued by any such office shall and may haue his or their trauers to the same immediately, or after, at his or their pleasure, and proceed and haue like triall and aduantage, as in other cases of trauers. Per que appiert q̃ le partie greue auera trauers (sans ꝑler dascun office) ⁊ proceed ⁊ dañ tiel aduantage come in auter case de trauers, ⁊ in auters cases de trauers ne besoigne ascun office. Mes fuit resolue que (come cest case al barre est) le plaintife couient dauer office troue deuant que il poet trauers: ⁊ quant al primer obiection fuit responde ⁊ resolue, q̃ in tiel speciall case de trouer dun heire cestuy que est droit heire et greue per loffice auera nouel briefe de Diem clausit extremum ou Mandamus: Car il est estraunger al dit office, et pur ceo loffice ne concludera luy: et le dit rule et les liures sont destre intend que mesme le person nauera nouel Diem clausit extremum ou Mandamus ap̃s office vn foitz duem̃t troue, mes auk̃ ꝑson ceo auera in cest case a prouer luy m̃ heire, ⁊ oue ceo accord 30.Ass.p.28. Fitzh.Nat.Bre. 261.262. 4.H.7.15. 12.R.2. tit̃ Liuery 28. Stamford prærog. 52.b. Et q̃ doit este office deuant q̃ il poet traũz le common ley in c̃ ad graund reason, car quant le Roy est suer de gard ou primer seisin ꝑ loffice nest reason q̃ ascun q̃ pretend luy m̃ heire trauerser̃ loffice q̃ lauter nest heire tanqꝫ le Roy soit suer dauer profit per luy ou per gard ou ꝑ primer seisin, car donques ap̃s le primer office auoide per trauers il poet mr̃e matter a barrer le Roy del gard ⁊ primer seisin q̃ ne serr̃ reasonable: Auxy al common ley enterplead gist ou ꝑ 2. seũall offices in vn m̃ countie seuerall ꝑsons sont seũalm̃t troue hr̃es a vn m̃ ꝑson a vn m̃ terre, ergo le ꝑty greue poet aũ br̃e a troũ office pur luy, car auk̃m̃t nul inkpled poet eẽ, car le hr̃e q̃ fuit prim̃mẽt troue hr̃e aũa Scir̃ fac' in le Chauncery v̄s cesty q̃ est troue hr̃e ꝑ le 2. office (pur ceo q̃ le Roy est in aweroust a q̃ il ferr̃ liuery) sur q̃ sil appeare ⁊ iustifie le 2. office pur le triall del priuity del sanke, donq̃s il doit traũs le prim̃ office (car tout l' inkpled ꝫr̃ sur c̃) ⁊ sur l' triall de c̃ cesty q̃ est troue hr̃e auera liuery. Issint q̃ appiert clerem̃t q̃ cesty q̃ trauerz loffice in tiel case doit auer office troue pur luy ꝑ le common ley. Et oue c̃ accord 36.E.3. tit̃ Traũs 44.16.E.4.4.F.N.B.162. Car cẽy q̃ doit suer̃

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liuery couient dauer office deuant q̃ il trauerſera, auterm̃t dun eſtraunger q̃ deſtroy le title le roy. Vide 36. E. 3. tit Trauers 44. 12. E. 4. 18. 16. E. 4. 4. 43. Aſſ. 20. 9 H. 7. 24. 5. E. 4. 5. 12. H. 6. 46. E. 3. Briefe 618. Quãt al 2. obiection fuit reſponde et reſolue, q̃ le dit act de 2. E 6. ne done trauers a ceſtuy q̃ pretend luy meſm̃ deſtre heire enconk vn office trouant pur vn auk heire ſans office troue pur luy, car ceo eſt incident a ceo q̃ neſt pas tolle p general polr del act, car donq̃s touts interpleaders ſerr̃ p ceo tolle auxi, q̃ ne vnques fuit lentention del act, mes lentẽtion des fealorz del act fuit a toller vn graund doubt q̃ fuit al cõmon ley, ſi vn ſoit troue heire deins age p vn office, & puis auter eſt troue heire in meſm̃ le countie de pleine age, ſi alcun trauers et interpleader ſerr̃ immediatm̃t, ou ſi trauers & interpleader targera tanqz le pleine age del infant fuit vexata queſtio, come appiert in m̃e liures, s̃, 36. E. 3. tit Trauers 44. 5. E. 4. 4. 1. H. 7. 14. F. N. B. 162. et pur ouſter ceſt doubt fuit leſtat̃ de 2. E. 6. fait, per q̃ eſt enact q̃ le ptie greue auera trauers immediatment, q̃l pol (immediately) prouue lentention del dit act a prouider pur le dit doubt et a doner ceſtuy q̃ fuit greue in tiel caſe trauers maintenant mes nemy de alter le foundation del trauers, s̃, office q̃ doit eſtre troue pur le party greue deuant q̃ il poet trauers: & ou le ſtatute dit q̃ il auera trauers maintenant, eſt intend q̃ il doit obſeruer touts incidents a vn trauers, car loffice eſt le ground et foundation de ſon trauers. Quant al 3. point fuit reſolue per le greinder pt q̃ vn bil de reuiuer ſur bil de reuiũ: ne ſerra admit pur le infinitenes. Car infinit̃ in iure reprobat̃: et nul briefe de iourneys accoũts ſur iourneys accoũts ſerr̃ porz. Mes fuit reſolue p touts q̃ cõe ceſt caſe eſt le darr̃ bil de reuiũ fuit abſurd, car ceo prie que le primer bill ſerr̃ reuiue, & le priũ bil pria q̃ Martha poet trauers, & Martha eſt morz, & pur ceo le bil de reuiuer doit auer prie que ſon heire poet trauers. Et iſſint primerm̃t le diuorce cy longe cõe ceo remaine in force lia le droit. Secondm̃t le nient trouer dun office diſable le pt̃ a trauerſer loffice. Et darreinment bil de reuiuer ſur reuiuer come ceſt caſe eſt nient maintenable.

FINIS.

¶Caſuum iſtius libri ſeries.

Caluins caſe.		Triñ 6.Iacob. Fol.1.
Bulwers caſe.		Mich.26.& 27.Eli. 1.
Sir *Miles Corbets* caſe.		Hillar̃ 27.Eliz. 5.
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